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VOLUME 1

Part 1

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 420, PACIFIC
REPORTER (2ND SERIES)

AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

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CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

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Presidential succession and inability, U.S. Const. Amd. 25.

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CONSTITUTIONAL AMENDMENTS IN VOLUME I (PART I)

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Emergency legislative power Art. VI, sec. 46

Engage and finance power Art. VIII, sec. 10

Legislative department Art. VI, sec. 2 and 3

Legislative assembly, composition Art. VI, sec. 2 note

For an amendment introduced in legislative session U. S. Const. Art. IV, sec. 5

Presidential election and duties U. S. Const. Art. II, sec. 1

Public accountants of office and salary Art. V, sec. 21 note

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

CONSTITUTION OF THE UNITED STATES

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392
P 2d 78.

§ 11. * * *

Leasing for Underground Storage

The law authorizing the lease of state
lands for underground storage of natural

gas does not violate this section. State ex
rel. Hughes v. State Board of Land
Commrs., 137 M 510, 353 P 2d 331, 335.

§ 25. * * *

Compiler's Note

A note under this section in the parent
volume refers to an act of congress, ch.

183, 62 Stat. at L. 170. The correct date
of the act is April 13, 1948, not 1949 as
shown in the parent volume.

CONSTITUTION

OF THE

STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 6.

References

State ex rel. Peery v. District Court,

145 M 287, 400 P 2d 648; *Tooker v. State*, — M —, 410 P 2d 923.

Sec. 7.

When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped

them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. *State v. Peters*, 146 M 188, 405 P 2d 642.

Sec. 8.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; Petition of Jones, 146

M 305, 405 P 2d 978; Petition of Evans, 146 M 405, 409 P 2d 456; Tooker v. State, — M —, 410 P 2d 923.

Sec. 11.

Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. State ex rel. Nelson v. Ellsworth, 142 M 14, 380 P 2d 886.

Sec. 14.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. Bakken v. State Highway Commission, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 35.

State v. Peterson 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. Alexander v. State Highway Commission, 142 M 93, 381 P 2d 780, distinguished in 142 M 256, 260, 384 P 2d 770; State Highway Commission v. Keneally, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274.

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. State Highway Commission v. Woodcock, — M —, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. State High-

way Commission v. Tubbs, — M —, 411 P 2d 739.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the

Sec. 15.

Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. Thisted v. Country Club Tower Corp., 146 M 87, 103, 405 P 2d

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to a "farce or a sham." State v. Noller, 142 M 35, 381 P 2d 293.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the questions presented on appeal because defendant had no voice in the appointment of counsel. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Right of Accused To Meet Witnesses against Him Face to Face

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. Tooker v. State, — M —, 410 P 2d 923.

Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court

Sec. 17.

Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed

in former jeopardy in violation of this

References

Cited or applied in Neil v. Lewis and Clark County, 133 M 323, 323 P 2d 270, 273.

432, overruling Herrin v. Sieben, 46 M 226, 127 P 323; Violet v. Martin, 62 M 335, 205 P 221 and Simonson v. McDonald, 131 M 494, 311 P 2d 982, 984.

involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. State v. Peters, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. State v. Peters, 146 M 188, 405 P 2d 642.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. State v. Hollywood, 138 M 561, 358 P 2d 437, 444.

Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. State v. Mielke, — M —, 420 P 2d 155, 157.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; State v. Moran, 142 M 423, 384 P 2d 777; Petition of Ditton, 145 M 594, 403 P 2d 205.

authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. Tooker v. State, — M —, 410 P 2d 923.

ing liquor to a minor was not placed in former jeopardy in violation of this

section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of

imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In *re Williams' Petition*, 145 M 45, 399 P 2d 732.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probationary rules placing reasonable restraints on a person's actions and conduct for the purpose of his rehabilitation. In *re Williams' Petition*, 145 M 45, 399 P 2d 732.

the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Sec. 20.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

Sec. 23.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. *Mahan v. Hardland*, — M —, 410 P 2d 156.

Deliberations of Jury

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in

References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407; *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, — M —, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is the result of a fair expression of opinion by all the jurors. *Schmoyer v. Bourdeau*, — M —, 420 P 2d 316, 317.

References

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112, 1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

Sec. 27.

Arbitrary Exercise of Licensing Power

The arrest of a person for operating a dry cleaning call office within the city

without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking

of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 869. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 864. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II

veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to premises within the city limits did not violate this section. *City of Billings v. Nore*, — M —, 417 P 2d 458, 465.

Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business

by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a \$25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and

not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. *Putro v. Baker*, — M —, 410 P 2d 717.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 973; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

Sec. 29.

Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel.

Peery v. District Court, 145 M 287, 400 P 2d 648.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 4.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Sec. 5.

Proposed Amendment

Chapter 248, Laws 1967, proposes to amend this section to read as follows:

"Section 5. No session of the legislative assembly shall exceed eighty (80) days.

"The compensation of the members of the legislative assembly shall be as provided by law; however, no legislative assembly shall fix its own compensation.

Per diem and expense payments to members for days in session shall not be made for more than eighty (80) days."

Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

Sec. 10.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 11.

References

State ex rel. *Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

Sec. 18.

Removal of State Officer

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. State ex rel. *MacGillvra v. District Court of the First Judicial District*, — M —, 418 P 2d 874, 876.

Sec. 20.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was

Sec. 24.

References

State ex rel. *Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sec. 29.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating

Sec. 31.

Proposed Amendment

Chapter 154, Laws 1967, proposes to amend this section to read as follows:

enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, containing more than one subject, violated this section. State ex rel. *Steen v. Murray*, 144 M 61, 394 P 2d 761, 764.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. State ex rel. *James v. Aronson*, 132 M 120, 314 P 2d 849, overruling State ex rel. *Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutional discriminatory in treating totally disabled employees less favorably than those only partially disabled. State ex rel. *Morgan v. White*, 136 M 470, 348 P 2d 991.

References

State ex rel. *Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

"Sec. 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or diminish

his salary or emolument after his election or appointment: provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or

emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution."

Sec. 32.

Construction

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 34.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 35.

Laws Violating This Provision

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was

prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Sec. 36.

Laws Not Violating This Provision

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so

taxed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515, 516.

Sec. 39.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

Sec. 40.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 45.**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

- (1) Section 3, Article X, seat of state government.
- (2) Section 2, Article XVI, seat of county governments.
- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION**Sec. 1.****Reapportionment**

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the

1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legisla-

tive assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

Reapportionment

Where legislature failed to reapportion congressional districts in three successive

sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1911 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

DECISIONS UNDER FORMER PROVISIONS

Reapportionment

The provision of this section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protec-

tion clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Secs. 4 to 6.

Repeal

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 931.

Sec. 7.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

Sec. 11.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 16.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 20.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 401 (dissenting opinion).

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; *State v. Frodsham*, 139 M 222, 362 P 2d 413, 416; *State ex*

rel. Peery v. District Court, 145 M 287, 400 P 2d 648; *State ex rel. Johnson v. District Court*, — M —, 410 P 2d 933.

Sec. 2.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1; *State ex rel.*

Peery v. District Court, 145 M 287, 400 P 2d 648; *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 3.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 913.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to is-

sue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799.

Sec. 11.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. *State ex rel. Lee v.*

Sec. 12.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel.*

Sec. 13.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 14.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 15.

Notice of Appeal

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

Sec. 16.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 17.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Montana Livestock Sanitary Board, 135 M 202, 339 P 2d 487.

References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Petition of Kelly*, 146 M 484, 408 P 2d 478; *State ex rel. Johnson v. District Court*, — M —, 410 P 2d 933.

Peery v. District Court, 145 M 287, 400 P 2d 648.

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 21.

References

State ex rel. Johnson v. District Court,
— M —, 410 P 2d 933.

Sec. 24.

References

City of Bozeman v. Ramsey, 139 M
148, 362 P 2d 206, 211.

Sec. 26.

References

State ex rel. Peery v. District Court,
145 M 287, 400 P 2d 648.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137
M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article viii as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Sec. 2.

Operation and Effect

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retirement. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 3.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

ARTICLE XI—EDUCATION

Sec. 1.

References

Cited in State ex rel. Ronish v. School

Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 7.

Operation and Effect

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-

tween the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Sec. 11.

Delegation of Powers

The legislature in sections 75-107 and 75-403 R. C. M. 1947, has restricted the board of education in delegation of its powers and this precludes college officials

from contracting with teachers and instructors on behalf of the board. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

Sec. 12.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legisla-

ture. Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Statutes Violating This Provision

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees,

was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discrimina-

tory. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 1a.

Income Tax

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 2.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Educational Purposes

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Sec. 3.

Adverse Possession

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals

were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of*

Sec. 11.

Construction with Other Sections

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v.*

Sec. 12.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

Sec. 15.

Construction with Other Sections

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Increased Valuation

State board of equalization's directive to county officials requiring use of certain valuations on grades of farm land for subsequent years, was enforceable by mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. *State ex rel. State Board of Equalization v. Koch*, 145 M 474, 401 P 2d 765.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class

Equalization, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. *State ex rel. State Board of Equalization v. Kovich*, 142 M 201, 383 P 2d 818.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of

equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid*

v. District Court, 134 M 128, 328 P 2d 634, 635.

References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

Sec. 16.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation

of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 34.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916.

ing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Laws Not Violating This Provision

Statute amending initiative act provid-

Sec. 5.

References

State ex rel. Keast v. Krieg, — M —, 410 P 2d 710.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of

the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

References

State ex rel. Johnson v. District Court of Fourth Judicial District, — M —, 417 P 2d 109, 112.

Sec. 20.

Fair Trade Act

The Fair Trade Act (sections 85-201 to 85-208) permits price-fixing in violation of this section and is therefore in-

valid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where

there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279; *McNussen v. Graybeal*, 146 M 173, 405 P 2d 447.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 2.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 4.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt, 140 M 353, 372 P 2d 142, 144.

Sec. 6.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors

was in violation of this section. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 335.

Market Value

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar

leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. *State ex rel. Thompson v. Babcock*, — M —, 409 P 2d 808.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.**References**

State ex rel. Werner v. District Court,
142 M 145, 382 P 2d 824.

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.**Initiative Measure Unconstitutional**

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. State v. Cox, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

Sec. 6.**Cross-References**

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 8.**Initiative Measure**

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Mon-

tana constitution where it did not comply with this section or section 9, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Sec. 9.**Proposed Amendment**

Chapter 315, Laws 1967, proposes to amend this section to read as follows:

"Section 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds ($\frac{2}{3}$) of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one (1) newspaper in each county (if such there be) for three (3) months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the

state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than six (6) amendments to this constitution shall be submitted at the same election."

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal

sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935	1947	1921 & 1935	1947
42, 43	Rep. Ch. 194, Sec. 13, L. 1967	466, 467	Rep. Ch. 68, Sec. 10, L. 1967
45	Rep. Ch. 194, Sec. 13, L. 1967	469-470	Rep. Ch. 177, Sec. 51, L. 1965
47	Rep. Ch. 194, Sec. 13, L. 1967	471	Rep. Ch. 68, Sec. 10, L. 1967
48	Unconstitutional, 246 F Supp 396	508	Rep. Ch. 68, Sec. 10, L. 1967
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	519-521	Rep. Ch. 80, Sec. 14, L. 1961
61-64	Rep. Ch. 1, Sec. 4, L. 1965	663	Rep. Ch. 156, Sec. 11, L. 1965
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	666	Rep. Ch. 156, Sec. 11, L. 1965
69-73	Rep. Ch. 1, Sec. 4, L. 1965	673.2	Rep. Ch. 156, Sec. 11, L. 1965
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965
137	Rep. Ch. 80, Sec. 14, L. 1961	798-800	Rep. Ch. 194, Sec. 13, L. 1967
148	Rep. Ch. 177, Sec. 51, L. 1965	812.14	Rep. Ch. 20, Sec. 3, L. 1959
153	Rep. Ch. 147, Sec. 242, L. 1963	860	Rep. Ch. 127, Sec. 1, L. 1967
179	Rep. Ch. 147, Sec. 242, L. 1963	913-916	Rep. Ch. 75, Sec. 5, L. 1967
188	Rep. Ch. 177, Sec. 51, L. 1965	1105-1112	Rep. Ch. 26, Sec. 1, L. 1961
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	1199	Rep. Ch. 79, Sec. 1, L. 1961
201	Rep. Ch. 177, Sec. 51, L. 1965	1212	Rep. Ch. 75, Sec. 1, L. 1961
202	Rep. Ch. 129, Sec. 1, L. 1963	1413	Rep. Ch. 199, Sec. 101, L. 1965
204, 205	Rep. Ch. 129, Sec. 1, L. 1963	1414	Rep. Ch. 266, Sec. 82, L. 1963
219	Rep. Ch. 129, Sec. 1, L. 1963	1415	Rep. Ch. 199, Sec. 101, L. 1965
223	Rep. Ch. 177, Sec. 51, L. 1965	1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963
238-241	Rep. Ch. 97, Sec. 32, L. 1961	1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963
249	Rep. Ch. 97, Sec. 32, L. 1961	1444	Rep. Ch. 213, Sec. 9, L. 1963
251-253	Rep. Ch. 80, Sec. 14, L. 1961	1445	Rep. Ch. 112, Sec. 15, L. 1963
254	Rep. Ch. 271, Sec. 33, L. 1963	1446	Rep. Ch. 112, Sec. 15 and Ch. 266, Sec. 82, L. 1963
255-259	Rep. Ch. 80, Sec. 14, L. 1961	1447-1450	Rep. Ch. 112, Sec. 15, L. 1963
259.2	Rep. Ch. 271, Sec. 33, L. 1963	1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
259.4	Rep. Ch. 271, Sec. 33, L. 1963	1453-1455	Rep. Ch. 112, Sec. 15, L. 1963
263-266	Rep. Ch. 80, Sec. 14, L. 1961	1484-1485	Rep. Ch. 199, Sec. 101, L. 1965
268, 269	Rep. Ch. 80, Sec. 14, L. 1961	1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963
274	Rep. Ch. 80, Sec. 14, L. 1961	1488	Rep. Ch. 199, Sec. 101, L. 1965
290	Rep. Ch. 177, Sec. 51, L. 1965	1489-1492	Rep. Ch. 266, Sec. 82, L. 1963
295-298	Rep. Ch. 158, Sec. 11, L. 1959	1493-1497	Rep. Ch. 199, Sec. 101, L. 1965
301	Rep. Ch. 147, Sec. 242, L. 1963	1498-1500	Rep. Ch. 266, Sec. 82, L. 1963
303	Rep. Ch. 158, Sec. 11, L. 1959	1503-1506	Rep. Ch. 199, Sec. 101, L. 1965
306	Rep. Ch. 81, Sec. 3, L. 1961	1511	Rep. Ch. 199, Sec. 101, L. 1965
310-315	Rep. Ch. 271, Sec. 33, L. 1963	1512-1515	Rep. Ch. 266, Sec. 82, L. 1963
317-319	Rep. Ch. 271, Sec. 33, L. 1963	1516-1517	Rep. Ch. 199, Sec. 101, L. 1965
349.1	Rep. Ch. 158, Sec. 7, L. 1967	1518	Rep. Ch. 266, Sec. 82, L. 1963
349.54-349.62	Rep. Ch. 19, Sec. 10, L. 1967	1519	Rep. Ch. 199, Sec. 101, L. 1965
349.65	Rep. Ch. 147, Sec. 242, L. 1963	1520	Rep. Ch. 189, Sec. 2, L. 1959
368	Rep. Ch. 129, Sec. 1, L. 1963	1521-1523	Rep. Ch. 213, Sec. 9, L. 1963
376	Rep. Ch. 177, Sec. 51, L. 1965	1524	Rep. Ch. 266, Sec. 82, L. 1963
380-383	Rep. Ch. 305, Sec. 2, L. 1967	1525	Rep. Ch. 199, Sec. 101, L. 1965
391	Rep. Ch. 264, Sec. 10-102, L. 1963	1526	Rep. Ch. 266, Sec. 82, L. 1963
437, 438	Rep. Ch. 202, Sec. 3, L. 1959	1527-1528	Rep. Ch. 199, Sec. 101, L. 1965
440	Rep. Ch. 202, Sec. 3, L. 1959	1529-1532	Rep. Ch. 266, Sec. 82, L. 1963
464-465	Rep. Ch. 177, Sec. 51, L. 1965		

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1921 & 1935	1947	1921 & 1935	1947
1533	Rep. Ch. 199, Sec. 101, L. 1965	1989	Rep. Ch. 147, Sec. 242, L. 1963
1534	Rep. Ch. 266, Sec. 82, L. 1963	1990-1995	Rep. Ch. 280, Sec. 22, L. 1965
1535-1536	Rep. Ch. 199, Sec. 101, L. 1965	2097-2110	S. Ch. 137, L. 1949
1537	Rep. Ch. 266, Sec. 82, L. 1963	2265-2267	Rep. Ch. 249, Sec. 23, L. 1967
1538	Rep. Ch. 199, Sec. 101, L. 1965	2381.22	Rep. Ch. 197, Sec. 12-109, L. 1965
1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963	2396.1	Rep. Ch. 197, Sec. 12-109, L. 1965
1541	Rep. Ch. 199, Sec. 101, L. 1965	2396.3	Rep. Ch. 197, Sec. 12-109, L. 1965
1542-1544	Rep. Ch. 266, Sec. 82, L. 1963	2444-2446	Rep. Ch. 197, Sec. 223, L. 1967
1545	Rep. Ch. 199, Sec. 101, L. 1965	2448	Rep. Ch. 197, Sec. 223, L. 1967
1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963	2450	Rep. Ch. 197, Sec. 223, L. 1967
1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965	2452-2484	Rep. Ch. 197, Sec. 223, L. 1967
1576-1579	Rep. Ch. 190, Sec. 1, L. 1959	2540, 2541	Rep. Ch. 197, Sec. 223, L. 1967
1611-1620	Rep. Ch. 197, Sec. 12-109, L. 1965	2543-2561	Rep. Ch. 197, Sec. 223, L. 1967
1622-1632	Rep. Ch. 197, Sec. 12-109, L. 1965	2562-2577	Rep. Ch. 107, Sec. 18, L. 1965
1634-1647	Rep. Ch. 197, Sec. 12-109, L. 1965	2578-2582	Rep. Ch. 307, Sec. 27, L. 1967
1649-1650	Rep. Ch. 197, Sec. 12-109, L. 1965	2586-2588	Rep. Ch. 307, Sec. 27, L. 1967
1676-1682	Rep. Ch. 197, Sec. 12-109, L. 1965	2589	Rep. Ch. 122, Sec. 12, L. 1965
1684-1701	Rep. Ch. 197, Sec. 12-109, L. 1965	2591, 2592	Rep. Ch. 307, Sec. 27, L. 1967
1703-1713	Rep. Ch. 197, Sec. 12-109, L. 1965	2594-2599	Rep. Ch. 307, Sec. 27, L. 1967
1721-1725	Rep. Ch. 197, Sec. 12-109, L. 1965	2615-2619	Rep. Ch. 197, Sec. 223, L. 1967
1727-1735	Rep. Ch. 197, Sec. 12-109, L. 1965	2641-2657	Rep. Ch. 197, Sec. 223, L. 1967
1737-1739	Rep. Ch. 197, Sec. 12-109, L. 1965	2738	Rep. Ch. 229, Sec. 14, L. 1967
1741	Rep. Ch. 197, Sec. 12-109, L. 1965	2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963
1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959	2744	Rep. Ch. 229, Sec. 14, L. 1967
1763.6	Rep. Ch. 256, Sec. 5, L. 1965	2757, 2758	Rep. Ch. 229, Sec. 14, L. 1967
1764	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965
1783-1792	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.111	Rep. Ch. 154, Sec. 17, L. 1965
1795-1798	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.116	Rep. Ch. 154, Sec. 17, L. 1965
1800	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.119-2815.120	Rep. Ch. 154, Sec. 17, L. 1965
1805.30	Rep. Ch. 257, Sec. 10, L. 1965	2815.122	Rep. Ch. 154, Sec. 17, L. 1965
1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961	2815.156	Rep. Ch. 147, Sec. 242, L. 1963
1937	Rep. Ch. 184, Sec. 8, L. 1961	2821-2822	Rep. Ch. 177, Sec. 51, L. 1965
1939	Rep. Ch. 184, Sec. 8, L. 1961	2921	Rep. Ch. 197, Sec. 1, L. 1959
1949-1953	Rep. Ch. 280, Sec. 22, L. 1965	2963	Rep. Ch. 147, Sec. 242, L. 1963
1954	Rep. Ch. 280, Sec. 1, L. 1965	3228.10	Rep. Ch. 177, Sec. 51, L. 1965
1955	Rep. Ch. 280, Sec. 22, L. 1965	3232	Rep. Ch. 138, Sec. 5, L. 1967
1956	Rep. Ch. 280, Sec. 1, L. 1965	3291	Rep. Ch. 147, Sec. 242, L. 1963
1957	Rep. Ch. 280, Sec. 1, L. 1965	3310	Rep. Ch. 177, Sec. 51, L. 1965
1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953
1959	Rep. Ch. 280, Sec. 1, L. 1965	3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953
1960	Rep. Ch. 280, Sec. 22, L. 1965	3360-3373	Rep. Ch. 32, Sec. 1, L. 1953
1961	Rep. Ch. 129, Sec. 1, L. 1963	3509	Rep. Ch. 188, Sec. 4, L. 1959
1962	Rep. Ch. 280, Sec. 22, L. 1965	3525	Rep. Ch. 188, Sec. 4, L. 1959
1963	Rep. Ch. 147, Sec. 242, L. 1963	3575.3	Rep. Ch. 147, Sec. 242, L. 1963
1964	Rep. Ch. 280, Sec. 22, L. 1965	3592.17	Rep. Ch. 177, Sec. 51, L. 1965
1966-1986	Rep. Ch. 280, Sec. 22, L. 1965	3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963
1987	Rep. Ch. 147, Sec. 242, L. 1963	3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963
1988	Rep. Ch. 280, Sec. 22, L. 1965	3736	Rep. Ch. 38, Sec. 2, L. 1963
		3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
		3786-3788	Rep. Ch. 129, Sec. 1, L. 1963
		3821	Rep. Ch. 199, Sec. 101, L. 1965
		3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965
		3913.3	Rep. Ch. 174, Sec. 16, L. 1961
		4026-4050	Rep. Ch. 251, Sec. 28, L. 1961
		4053	Rep. Ch. 251, Sec. 28, L. 1961
		4056-4078	Rep. Ch. 250, Sec. 24, L. 1963
		4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963

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1921 & 1935	1947	1921 & 1935	1947
4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963	7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963
4208.1-4208.11	Rep. Ch. 55, Sec. 3, L. 1965	7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963
4244	Rep. Ch. 160, Sec. 24, L. 1965	7618	Rep. Ch. 264, Sec. 10-102, L. 1963
4246	Rep. Ch. 160, Sec. 24, L. 1965	7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963
4258	Rep. Ch. 160, Sec. 24, L. 1965	7633	Rep. Ch. 264, Sec. 10-102, L. 1963
4273	Rep. Ch. 160, Sec. 24, L. 1965	7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963
4276	Rep. Ch. 307, Sec. 27, L. 1967	7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963
4396.1	Rep. Ch. 194, Sec. 13, L. 1967	8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963
4405	Rep. Ch. 194, Sec. 13, L. 1967	8224	Rep. Ch. 264, Sec. 10-102, L. 1963
4448	S. M.R.Civ.P., Rule 4 D	8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963
4455	Rep. Ch. 68, Sec. 10, L. 1967	8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963
4479	Rep. Ch. 197, Sec. 12-109, L. 1965	8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963
4486.1, 4486.2	Rep. Ch. 197, Sec. 12-109, L. 1965	8295	Rep. Ch. 264, Sec. 10-102, L. 1963
4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	8298	Rep. Ch. 264, Sec. 10-102, L. 1963
4594	Rep. Ch. 136, Sec. 1, L. 1961	8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963
4630.2	Rep. Ch. 197, Sec. 12-109, L. 1965	8381	Rep. Ch. 264, Sec. 10-102, L. 1963
4713-4716	Rep. Ch. 197, Sec. 12-109, L. 1965	8393-8395	Rep. Ch. 32, Sec. 1, L. 1953
4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963	8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963
4845, 4846	Rep. Ch. 197, Sec. 12-109, L. 1965	8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963
4860	Rep. Ch. 68, Sec. 10, L. 1967	8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963
4998	Rep. Ch. 260, Sec. 12, L. 1967	8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963
5016, 5017	Rep. Ch. 67, Sec. 11, L. 1967	8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963
5148.1	Unconstitutional, 134 M 355, 332 P 2d 501	8685	Rep. Ch. 200, Sec. 7, L. 1963
5158.2	Rep. Ch. 147, Sec. 242, L. 1963	8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963
5508	Rep. Ch. 67, Sec. 11, L. 1967	8839	Rep. Ch. 68, Sec. 10, L. 1967
5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963	8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963
5668.28	Rep. Ch. 147, Sec. 242, L. 1963	8960	Rep. Ch. 147, Sec. 242, L. 1963
5696	Rep. Ch. 232, Sec. 12, L. 1963	9010	Rep. Ch. 13, Sec. 84, L. 1961
5707	Rep. Ch. 232, Sec. 12, L. 1963	9065	Rep. Ch. 7, Sec. 1, L. 1963
5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963	9067	Rep. Ch. 13, Sec. 84, L. 1961
5715	Rep. Ch. 232, Sec. 12, L. 1963	9071	Rep. Ch. 13, Sec. 84, L. 1961
5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963	9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961
5856-5866	Rep. Ch. 199, Sec. 1, L. 1961	9080	Rep. Ch. 13, Sec. 84, L. 1961
5954	Rep. Ch. 264, Sec. 10-102, L. 1963	9082-9084	Rep. Ch. 13, Sec. 84, L. 1961
5956	Rep. Ch. 264, Sec. 10-102, L. 1963	9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961
6014.63	Rep. Ch. 129, Sec. 1, L. 1963	9090	Rep. Ch. 13, Sec. 84, L. 1961
6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963	9097	Rep. Ch. 13, Sec. 84, L. 1961
6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963	9105	Rep. Ch. 6, Sec. 1, L. 1963
6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963	9106	S. M.R.Civ.P., Rule 41(e)
6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963	9107	Rep. Ch. 13, Sec. 84, L. 1961
6155	Rep. Ch. 43, Sec. 4, L. 1959	9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963
6236	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967	9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961
6535	Rep. Ch. 264, Sec. 10-102, L. 1963	9112	S. M.R.Civ.P., Rule 4 D
6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963	9113, 9114	Rep. Ch. 189, Sec. 2, L. 1963
6721	Rep. Ch. 213, Sec. 3, L. 1959	9115, 9116	S. M.R.Civ.P., Rule 4 D
6734	Rep. Ch. 213, Sec. 3, L. 1959	9117-9119	Rep. Ch. 13, Sec. 84, L. 1961
6736-6739	Rep. Ch. 213, Sec. 3, L. 1959	9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961
6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963		
7111, 7112	Rep. Ch. 197, Sec. 12-109, L. 1965		

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1921 & 1935	1947	1921 & 1935	1947
9123	Rep. Ch. 189, Sec. 2, L. 1963	9784	Rep. Ch. 13, Sec. 84, L. 1961
9125-9138	Rep. Ch. 13, Sec. 84, L. 1961	9792	Rep. Ch. 13, Sec. 84, L. 1961
9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961	9820	Rep. Ch. 13, Sec. 84, L. 1961
9144	Rep. Ch. 13, Sec. 84, L. 1961	10620	Rep. Ch. 13, Sec. 84, L. 1961
9146-9148	Rep. Ch. 13, Sec. 84, L. 1961	10622	Rep. Ch. 154, Sec. 1, L. 1959
9151-9162	Rep. Ch. 13, Sec. 84, L. 1961	10643-10658	Rep. Ch. 13, Sec. 84, L. 1961
9164-9166	Rep. Ch. 13, Sec. 84, L. 1961	10686-10692	Rep. Ch. 13, Sec. 84, L. 1961
9169-9171	Rep. Ch. 13, Sec. 84, L. 1961	10925	94-3920
9174-9176	Rep. Ch. 13, Sec. 84, L. 1961	11180	Rep. Ch. 196, Sec. 15, L. 1965
9178-9187	Rep. Ch. 13, Sec. 84, L. 1961	11464	Rep. Ch. 197, Sec. 12-109, L. 1965
9189	Rep. Ch. 13, Sec. 84, L. 1961	11473	Rep. Ch. 174, Sec. 3, L. 1963
9191	Rep. Ch. 13, Sec. 84, L. 1961	11567	Rep. Ch. 52, Sec. 1, L. 1959
9239	Rep. Ch. 13, Sec. 84, L. 1961	11579	Rep. Ch. 135, Sec. 2, L. 1967
9292	Rep. Ch. 264, Sec. 10-102, L. 1963	11847	Rep. Ch. 172, Sec. 3, L. 1961
9313	Rep. Ch. 13, Sec. 84, L. 1961	12434-12438	Rep. Ch. 199, Sec. 101, L. 1965
9315-9317	Rep. Ch. 13, Sec. 84, L. 1961	12439	Rep. Ch. 266, Sec. 82, L. 1963
9320-9322	Rep. Ch. 13, Sec. 84, L. 1961	12440-12442	Rep. Ch. 199, Sec. 101, L. 1965
9324	Rep. Ch. 13, Sec. 84, L. 1961	12443-12445	Rep. Ch. 266, Sec. 82, L. 1963
9326-9328	Rep. Ch. 13, Sec. 84, L. 1961	12446-12447	Rep. Ch. 199, Sec. 101, L. 1965
9330, 9331	Rep. Ch. 13, Sec. 84, L. 1961	12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959
9345-9347	Rep. Ch. 13, Sec. 84, L. 1961	12447.11-12449	Rep. Ch. 199, Sec. 101, L. 1965
9359-9361	Rep. Ch. 13, Sec. 84, L. 1961	12450	Rep. Ch. 15, Sec. 1, L. 1959
9365	Rep. Ch. 13, Sec. 84, L. 1961	12451-12453	Rep. Ch. 266, Sec. 82, L. 1963
9367	Rep. Ch. 13, Sec. 84, L. 1961	12454	Rep. Ch. 199, Sec. 101, L. 1965
9374-9376	Rep. Ch. 13, Sec. 84, L. 1961	12456	Rep. Ch. 199, Sec. 101, L. 1965
9378-9380	Rep. Ch. 13, Sec. 84, L. 1961	12458-12459	Rep. Ch. 199, Sec. 101, L. 1965
9383-9385	Rep. Ch. 13, Sec. 84, L. 1961	12460	Rep. Ch. 266, Sec. 82, L. 1963
9386	S. M.R.App.Civ.P.	12461-12462	Rep. Ch. 199, Sec. 101, L. 1965
9387	Rep. Ch. 13, Sec. 84, L. 1961	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
9388	S. M.R.App.Civ.P.	12464	Rep. Ch. 199, Sec. 101, L. 1965
9389-9394	S. M.R.App.Civ.P., Rules 9, 10, 25	12465	Rep. Ch. 266, Sec. 82, L. 1963
9399	Rep. Ch. 13, Sec. 84, L. 1961	12465.1-12465.8	Rep. Ch. 199, Sec. 101, L. 1965
9401	S. M.R.App.Civ.P., Rule 7	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
9402	S. M.R.App.Civ.P., Rules 9, 10, 25	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
9403	Rep. Ch. 13, Sec. 84, L. 1961	12494	Rep. Ch. 199, Sec. 101, L. 1965
9404	S. M.R.App.Civ.P., Rule 29	12495	Rep. Ch. 266, Sec. 82, L. 1963
9405	Rep. Ch. 13, Sec. 84, L. 1961	12496	Rep. Ch. 199, Sec. 101, L. 1965
9482, 9483	Rep. Ch. 189, Sec. 2, L. 1963	12497	Rep. Ch. 266, Sec. 82, L. 1963
9485	Rep. Ch. 189, Sec. 2, L. 1963	12499	Rep. Ch. 199, Sec. 101, L. 1965
9731	S. M.R.App.Civ.P., Rule 1	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
9732	S. M.R.App.Civ.P., Rule 5	12503-12512	Rep. Ch. 199, Sec. 101, L. 1965
9733	S. M.R.App.Civ.P., Rules 4, 6	12513-12515	Rep. Ch. 266, Sec. 82, L. 1963
9734	S. M.R.App.Civ.P., Rule 6	12519	Rep. Ch. 266, Sec. 82, L. 1963
9735-9738	Rep. Ch. 13, Sec. 84, L. 1961	12520-12521	Rep. Ch. 199, Sec. 101, L. 1965
9739	S. M.R.App.Civ.P., Rule 7	12522	Rep. Ch. 266, Sec. 82, L. 1963
9740	S. M.R.App.Civ.P., Rules 6, 7	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
9742	S. M.R.App.Civ.P., Rule 7	12529	Rep. Ch. 199, Sec. 101, L. 1965
9743	S. M.R.App.Civ.P., Rule 6	12530-12532	Rep. Ch. 266, Sec. 82, L. 1963
9744	S. M.R.App.Civ.P., Rule 13	12533	Rep. Ch. 199, Sec. 101, L. 1965
9745	S. M.R.App.Civ.P., Rule 1	12534	Rep. Ch. 266, Sec. 82, L. 1963
9746	S. M.R.App.Civ.P., Rules 9, 10, 25	12535-12545	Rep. Ch. 199, Sec. 101, L. 1965
9747	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25	12546	Rep. Ch. 266, Sec. 82, L. 1963
9748	S. M.R.App.Civ.P., Rule 12	12547-12552	Rep. Ch. 199, Sec. 101, L. 1965
9749	S. M.R.App.Civ.P., Rules 9, 10, 25	12572	Rep. Ch. 199, Sec. 101, L. 1965
9750	S. M.R.App.Civ.P., Rule 2		
9751	S. M.R.App.Civ.P., Rule 14		
9752	S. M.R.App.Civ.P., Rule 15		
9753	S. M.R.App.Civ.P., Rule 16		
9770-9772	Rep. Ch. 13, Sec. 84, L. 1961		
9774	Rep. Ch. 13, Sec. 84, L. 1961		
9778-9781	Rep. Ch. 13, Sec. 84, L. 1961		

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This table shows the disposition made of the sections of the Revised Codes of 1907 since publication of Replacement Volume 1.

1907	1947	1907	1947
41-43	Rep. Ch. 194, Sec. 13, L. 1967	1270	Rep. Ch. 266, Sec. 82, L. 1963
47	Unconstitutional, 246 F Supp 396	1273	Rep. Ch. 266, Sec. 82, L. 1963
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	1277-1280	Rep. Ch. 199, Sec. 101, L. 1965
61-64	Rep. Ch. 1, Sec. 4, L. 1965	1281	Rep. Ch. 266, Sec. 82, L. 1963
68, 69	Rep. Ch. 1, Sec. 4, L. 1965	1282-1283	Rep. Ch. 199, Sec. 101, L. 1965
71-74	Rep. Ch. 1, Sec. 4, L. 1965	1284-1287	Rep. Ch. 266, Sec. 82, L. 1963
76	Rep. Ch. 1, Sec. 4, L. 1965	1288	Rep. Ch. 199, Sec. 101, L. 1965
79	Rep. Ch. 1, Sec. 4, L. 1965	1289	Rep. Ch. 266, Sec. 82, L. 1963
81	Rep. Ch. 1, Sec. 4, L. 1965	1290-1291	Rep. Ch. 199, Sec. 101, L. 1965
158	Rep. Ch. 80, Sec. 14, L. 1961	1292	Rep. Ch. 266, Sec. 82, L. 1963
169	Rep. Ch. 177, Sec. 51, L. 1965	1293	Rep. Ch. 199, Sec. 201, L. 1965
172	Rep. Ch. 147, Sec. 242, L. 1963	1294	Rep. Ch. 266, Sec. 82, L. 1963
180	Rep. Ch. 147, Sec. 242, L. 1963	1298	Rep. Ch. 199, Sec. 101, L. 1965
189	Rep. Ch. 177, Sec. 51, L. 1965	1299-1301	Rep. Ch. 266, Sec. 82, L. 1963
195	Rep. Ch. 177, Sec. 51, L. 1965	1302	Rep. Ch. 199, Sec. 101, L. 1965
196	Rep. Ch. 129, Sec. 1, L. 1963	1305	Rep. Ch. 266, Sec. 82, L. 1963
214	Rep. Ch. 129, Sec. 1, L. 1963	1306	Rep. Ch. 190, Sec. 1, L. 1959
217	Rep. Ch. 177, Sec. 51, L. 1965	1308-1310	Rep. Ch. 190, Sec. 1, L. 1959
232-235	Rep. Ch. 97, Sec. 32, L. 1961	1474, 1475	Rep. Ch. 197, Sec. 223, L. 1967
243	Rep. Ch. 97, Sec. 32, L. 1961	1477	Rep. Ch. 197, Sec. 223, L. 1967
245-247	Rep. Ch. 80, Sec. 14, L. 1961	1481-1511	Rep. Ch. 197, Sec. 223, L. 1967
248	Rep. Ch. 271, Sec. 33, L. 1963	1559-1572	Rep. Ch. 197, Sec. 223, L. 1967
249-253	Rep. Ch. 80, Sec. 14, L. 1961	1797	Rep. Ch. 177, Sec. 51, L. 1965
257-260	Rep. Ch. 80, Sec. 14, L. 1961	2238-2242	Rep. Ch. 280, Sec. 22, L. 1965
262, 263	Rep. Ch. 80, Sec. 14, L. 1961	2243	Rep. Ch. 280, Sec. 1, L. 1965
265-267	Rep. Ch. 271, Sec. 33, L. 1963	2244	Rep. Ch. 280, Sec. 22, L. 1965
297	Rep. Ch. 129, Sec. 1, L. 1963	2245	Rep. Ch. 280, Sec. 1, L. 1965
305	Rep. Ch. 177, Sec. 51, L. 1965	2246	Rep. Ch. 129, Sec. 1 and
308-311	Rep. Ch. 305, Sec. 2, L. 1967		Ch. 147, Sec. 242, L. 1963
321	Rep. Ch. 264, Sec. 10-102, L. 1963	2247	Rep. Ch. 280, Sec. 1, L. 1965
378-379	Rep. Ch. 177, Sec. 51, L. 1965	2248	Rep. Ch. 280, Sec. 22, L. 1965
380	Rep. Ch. 68, Sec. 10, L. 1967	2249	Rep. Ch. 129, Sec. 1, L. 1963
417	Rep. Ch. 68, Sec. 10, L. 1967	2250	Rep. Ch. 280, Sec. 22, L. 1965
443-445	Rep. Ch. 80, Sec. 14, L. 1961	2251	Rep. Ch. 147, Sec. 242, L. 1963
595-597	Rep. Ch. 194, Sec. 13, L. 1967	2252	Rep. Ch. 280, Sec. 22, L. 1965
766-769	Rep. Ch. 75, Sec. 5, L. 1967	2255-2269	Rep. Ch. 280, Sec. 22, L. 1965
946	Rep. Ch. 26, Sec. 1, L. 1961	2271-2276	Rep. Ch. 280, Sec. 22, L. 1965
948-951	Rep. Ch. 26, Sec. 1, L. 1961	2277	Rep. Ch. 147, Sec. 242, L. 1963
1113	Rep. Ch. 266, Sec. 82, L. 1963	2278	Rep. Ch. 280, Sec. 22, L. 1965
1132	Rep. Ch. 198, Sec. 2 and	2279	Rep. Ch. 147, Sec. 242, L. 1963
	Ch. 213, Sec. 9, L. 1963	2280-2281	Rep. Ch. 280, Sec. 22, L. 1965
1147	Rep. Ch. 213, Sec. 9, L. 1963	2725-2727	Rep. Ch. 249, Sec. 23, L. 1967
1249-1250	Rep. Ch. 199, Sec. 101, L. 1965	2877	S. M.R.Civ.P., Rule 4 D
1259	Rep. Ch. 199, Sec. 101, L. 1965	2884	Rep. Ch. 68, Sec. 10, L. 1967
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	3063, 3064	Rep. Ch. 197, Sec. 12-109, L. 1965
1265	Rep. Ch. 266, Sec. 82, L. 1963		
1267	Rep. Ch. 266, Sec. 82, L. 1963	3097	Rep. Ch. 68, Sec. 10, L. 1967

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1907	1947	1907	1947
3219	Rep. Ch. 260, Sec. 12, L. 1967	6495-6496	Rep. Ch. 13, Sec. 84, L. 1961
3237, 3238	Rep. Ch. 67, Sec. 11, L. 1967	6498	Rep. Ch. 13, Sec. 84, L. 1961
3608	Rep. Ch. 232, Sec. 12, L. 1963	6505	Rep. Ch. 13, Sec. 84, L. 1961
3614	Rep. Ch. 232, Sec. 12, L. 1963	6513	Rep. Ch. 6, Sec. 1, L. 1963
3618, 3619	Rep. Ch. 232, Sec. 12, L. 1963	6514	S. M.R.Civ.P., Rule 41(e)
3622	Rep. Ch. 232, Sec. 12, L. 1963	6515	Rep. Ch. 13, Sec. 84, L. 1961
3638, 3639	Rep. Ch. 169, Sec. 4, L. 1963	6516	Rep. Ch. 5, Sec. 1 and
3761-3771	Rep. Ch. 199, Sec. 1, L. 1961		Ch. 189, Sec. 2, L. 1963
3855	Rep. Ch. 264, Sec. 10-102, L. 1963	6518-6522	Rep. Ch. 13, Sec. 84, L. 1961
3857	Rep. Ch. 264, Sec. 10-102, L. 1963	6524, 6525	Rep. Ch. 13, Sec. 84, L. 1961
4069	Rep. Ch. 43, Sec. 4, L. 1959	6526	Rep. Ch. 189, Sec. 2, L. 1963
4303	Rep. Ch. 264, Sec. 10-102, L. 1963	6528-6541	Rep. Ch. 13, Sec. 84, L. 1961
4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963	6543, 6544	Rep. Ch. 13, Sec. 84, L. 1961
4368	Rep. Ch. 129, Sec. 1 and	6547	Rep. Ch. 13, Sec. 84, L. 1961
	Ch. 212, Sec. 3, L. 1963	6549-6551	Rep. Ch. 13, Sec. 84, L. 1961
4479	Rep. Ch. 213, Sec. 3, L. 1959	6554-6564	Rep. Ch. 13, Sec. 84, L. 1961
4492	Rep. Ch. 213, Sec. 3, L. 1959	6566-6568	Rep. Ch. 13, Sec. 84, L. 1961
4494-4497	Rep. Ch. 213, Sec. 3, L. 1959	6571-6573	Rep. Ch. 13, Sec. 84, L. 1961
4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963	6576-6578	Rep. Ch. 13, Sec. 84, L. 1961
4858, 4859	Rep. Ch. 197, Sec. 12-109, L. 1965	6580-6589	Rep. Ch. 13, Sec. 84, L. 1961
5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963	6591	Rep. Ch. 13, Sec. 84, L. 1961
5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963	6593	Rep. Ch. 13, Sec. 84, L. 1961
5115	Rep. Ch. 264, Sec. 10-102, L. 1963	6641	Rep. Ch. 13, Sec. 84, L. 1961
5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963	6690	Rep. Ch. 264, Sec. 10-102, L. 1963
5130	Rep. Ch. 264, Sec. 10-102, L. 1963	6710	Rep. Ch. 13, Sec. 84, L. 1961
5177	Rep. Ch. 135, Sec. 2, L. 1967	6712-6714	Rep. Ch. 13, Sec. 84, L. 1961
5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963	6717-6719	Rep. Ch. 13, Sec. 84, L. 1961
5357-5359	Rep. Ch. 264, Sec. 10-102, L. 1963	6721	Rep. Ch. 13, Sec. 84, L. 1961
5695-5703	Rep. Ch. 264, Sec. 10-102, L. 1963	6723-6725	Rep. Ch. 13, Sec. 84, L. 1961
5709	Rep. Ch. 264, Sec. 10-102, L. 1963	6727, 6728	Rep. Ch. 13, Sec. 84, L. 1961
5777	Rep. Ch. 264, Sec. 10-102, L. 1963	6738	S. M.R.App.Civ.P.
5780	Rep. Ch. 264, Sec. 10-102, L. 1963	6742-6744	Rep. Ch. 13, Sec. 84, L. 1961
5788-5799	Rep. Ch. 264, Sec. 10-102, L. 1963	6756-6758	Rep. Ch. 13, Sec. 84, L. 1961
5803	Rep. Ch. 264, Sec. 10-102, L. 1963	6762	Rep. Ch. 13, Sec. 84, L. 1961
5813-5815	Rep. Ch. 32, Sec. 1, L. 1953	6764	Rep. Ch. 13, Sec. 84, L. 1961
5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963	6771-6773	Rep. Ch. 13, Sec. 84, L. 1961
5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963	6775-6777	Rep. Ch. 13, Sec. 84, L. 1961
6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963	6780-6782	Rep. Ch. 13, Sec. 84, L. 1961
6067	Rep. Ch. 200, Sec. 7, L. 1963	6784	Rep. Ch. 13, Sec. 84, L. 1961
6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963	6785	S. M.R.App.Civ.P.
6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963	6787-6792	S. M.R.App.Civ.P.,
6285	Rep. Ch. 68, Sec. 10, L. 1967		Rules 9, 10, 25
6427	Rep. Ch. 13, Sec. 84, L. 1961	6796	Rep. Ch. 13, Sec. 84, L. 1961
6475	Rep. Ch. 7, Sec. 1, L. 1963	6798	S. M.R.App.Civ.P., Rule 7
6477	Rep. Ch. 13, Sec. 84, L. 1961	6799	S. M.R.App.Civ.P.,
6481	Rep. Ch. 13, Sec. 84, L. 1961		Rules 9, 10, 25
6487, 6488	Rep. Ch. 13, Sec. 84, L. 1961	6800	Rep. Ch. 13, Sec. 84, L. 1961
6490-6492	Rep. Ch. 13, Sec. 84, L. 1961	6801	S. M.R.App.Civ.P., Rule 29
		6802	Rep. Ch. 13, Sec. 84, L. 1961
		6806	S. M.R.App.Civ.P.,
			Rules 9, 10, 25
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		7099	S. M.R.App.Civ.P., Rule 5
		7100	S. M.R.App.Civ.P., Rules 4, 6
		7101	S. M.R.App.Civ.P., Rule 6
		7102-7105	Rep. Ch. 13, Sec. 84, L. 1961
		7106	S. M.R.App.Civ.P., Rule 7
		7107	S. M.R.App.Civ.P., Rules 6, 7
		7109	S. M.R.App.Civ.P., Rule 7
		7110	S. M.R.App.Civ.P., Rule 6
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		7113	S. M.R.App.Civ.P., Rule 1
		7115	S. M.R.App.Civ.P., Rules 9, 10, 25

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1907	1947	1907	1947
7116	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25	9722-9724	Rep. Ch. 199, Sec. 101, L. 1965
7117	S. M.R.App.Civ.P., Rule 12	9725-9727	Rep. Ch. 266, Sec. 82, L. 1963
7118	S. M.R.App.Civ.P., Rule 14	9728-9731	Rep. Ch. 199, Sec. 101, L. 1965
7119	S. M.R.App.Civ.P., Rule 15	9732	Rep. Ch. 15, Sec. 1, L. 1959
7120	S. M.R.App.Civ.P., Rule 16	9733-9735	Rep. Ch. 266, Sec. 82, L. 1963
7137-7139	Rep. Ch. 13, Sec. 84, L. 1961	9736	Rep. Ch. 199, Sec. 101, L. 1965
7141	Rep. Ch. 13, Sec. 84, L. 1961	9739-9740	Rep. Ch. 199, Sec. 101, L. 1965
7145-7148	Rep. Ch. 13, Sec. 84, L. 1961	9741	Rep. Ch. 266, Sec. 82, L. 1963
7151	Rep. Ch. 13, Sec. 84, L. 1961	9742-9743	Rep. Ch. 199, Sec. 101, L. 1965
7159	Rep. Ch. 13, Sec. 84, L. 1961	9744	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
7187	Rep. Ch. 13, Sec. 84, L. 1961	9745	Rep. Ch. 199, Sec. 101, L. 1965
7976	Rep. Ch. 13, Sec. 84, L. 1961	9748	Rep. Ch. 266, Sec. 82, L. 1963
7978	Rep. Ch. 154, Sec. 1, L. 1959	9779	Rep. Ch. 266, Sec. 82, L. 1963
7999-8014	Rep. Ch. 13, Sec. 84, L. 1961	9780	Rep. Ch. 199, Sec. 101, L. 1965
8042-8048	Rep. Ch. 13, Sec. 84, L. 1961	9791	Rep. Ch. 266, Sec. 82, L. 1963
8736	Rep. Ch. 197, Sec. 12-109, L. 1965	9794	Rep. Ch. 199, Sec. 101, L. 1965
8745	Rep. Ch. 174, Sec. 3, L. 1963	9795	Rep. Ch. 266, Sec. 82, L. 1963
8881	Rep. Ch. 52, Sec. 1, L. 1959	9797	Rep. Ch. 199, Sec. 101, L. 1965
9151	Rep. Ch. 172, Sec. 3, L. 1961	9798-9800	Rep. Ch. 266, Sec. 82, L. 1963
9716-9720	Rep. Ch. 199, Sec. 101, L. 1965	9805-9814	Rep. Ch. 199, Sec. 101, L. 1965
9721	Rep. Ch. 266, Sec. 82, L. 1963	9815-9817	Rep. Ch. 266, Sec. 82, L. 1963

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1909			Ch.	Sec.	Herein
Ch.	Sec.	Herein			
8	1	Rep. Ch. 190, Sec. 1, L. 1959	34	10	Rep. Ch. 160, Sec. 24, L. 1965
9	1	Rep. Ch. 197, Sec. 12-109, L. 1965		23	Rep. Ch. 160, Sec. 24, L. 1965
20	1	Rep. Ch. 196, Sec. 15, L. 1965	38	2	Rep. Ch. 194, Sec. 13, L. 1967
23	1	Rep. Ch. 266, Sec. 82, L. 1963	52	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	2	Rep. Ch. 199, Sec. 101, L. 1965	66	1-2	Rep. Ch. 197, Sec. 223, L. 1967
	3	Rep. Ch. 266, Sec. 82, L. 1963	93	2	Rep. Ch. 129, Sec. 1, L. 1963
30	1	Rep. Ch. 266, Sec. 82, L. 1963	120	67	Rep. Ch. 188, Sec. 4, L. 1959
33	3	Rep. Ch. 197, Sec. 12-109, L. 1965		83	Rep. Ch. 188, Sec. 4, L. 1959
43	1	Rep. Ch. 280, Sec. 22, L. 1965	123	1-4	Rep. Ch. 280, Sec. 22, L. 1965
45	3	Rep. Ch. 1, Sec. 4, L. 1965	125	1	Rep. Ch. 199, Sec. 101, L. 1965
47	1	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25		2-5	Rep. Ch. 266, Sec. 82, L. 1963
82	1	Rep. Ch. 264, Sec. 10-102, L. 1963		6-7	Rep. Ch. 199, Sec. 101, L. 1965
86	2	Rep. Ch. 81, Sec. 3, L. 1961		8	Rep. Ch. 266, Sec. 82, L. 1963
92	1	Rep. Ch. 196, Sec. 15, L. 1965		9	Rep. Ch. 199, Sec. 101, L. 1965
108	1-16	Rep. Ch. 32, Sec. 1, L. 1953		10	Rep. Ch. 189, Sec. 2, L. 1959
117	1	Rep. Ch. 197, Sec. 223, L. 1967		11-13	Rep. Ch. 213, Sec. 9, L. 1963
120	4-5	Rep. Ch. 89, Sec. 4, L. 1961		14	Rep. Ch. 266, Sec. 82, L. 1963
131	1-6	Rep. Ch. 199, Sec. 101, L. 1965		15	Rep. Ch. 199, Sec. 101, L. 1965
147	18	Rep. Ch. 280, Sec. 1, L. 1965	128	1	Rep. Ch. 129, Sec. 1, L. 1963 and Ch. 280, Sec. 22, L. 1965
1911			130	1-5	Rep. Ch. 307, Sec. 27, L. 1967
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6	3	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967		10	Rep. Ch. 122, Sec. 12, L. 1965
20	1	Rep. Ch. 266, Sec. 82, L. 1963		11-12	Rep. Ch. 307, Sec. 27, L. 1967
32	1	Rep. Ch. 199, Sec. 101, L. 1965	139	15-17	Rep. Ch. 307, Sec. 27, L. 1967
				1	Rep. Ch. 112, Sec. 15, L. 1963

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	4-7	Rep. Ch. 112, Sec. 15, L. 1963	85	1-24	Rep. Ch. 251, Sec. 28, L. 1961
	8-9	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	86	1-11	Rep. Ch. 264, Sec. 10-102, L. 1963
	10-12	Rep. Ch. 112, Sec. 15, L. 1963		15-16	Rep. Ch. 264, Sec. 10-102, L. 1963
148	2	Rep. Ch. 229, Sec. 14, L. 1967	93	1	Rep. Ch. 199, Sec. 101, L. 1965
	3	Rep. Ch. 129, Sec. 1, L. 1963	118	1	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
	7	Rep. Ch. 229, Sec. 14, L. 1967	120	1-9	Rep. Ch. 197, Sec. 223, L. 1967
	20-21	Rep. Ch. 229, Sec. 14, L. 1967	Primary Law, Initiative Measure, 1912		
			34		Rep. Ch. 156, Sec. 11, L. 1965
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11	1	Rep. Ch. 199, Sec. 101, L. 1965	1	1-5	Rep. Ch. 1, Sec. 4, L. 1965
15	1	Rep. Ch. 197, Sec. 223, L. 1967	20	1	Rep. Ch. 197, Sec. 12-109, L. 1965
37	1	Rep. Ch. 1, Sec. 4, L. 1965	22	1	Rep. Ch. 37, Sec. 6, L. 1917
45	1	Rep. Ch. 32, Sec. 1, L. 1953	40	1	Rep. Ch. 202, Sec. 3, L. 1959
57	1	Rep. Ch. 199, Sec. 101, L. 1965	45	1-10	Rep. Ch. 260, Sec. 12, L. 1967
	2	Rep. Ch. 266, Sec. 82, L. 1963	55	1	Rep. Ch. 196, Sec. 15, L. 1965
	3	Rep. Ch. 199, Sec. 101, L. 1965	77	1	Rep. Ch. 129, Sec. 1, L. 1963
	4-5	Rep. Ch. 266, Sec. 82, L. 1963	94	1	Rep. Ch. 264, Sec. 10-102, L. 1963
62	1	Rep. Ch. 129, Sec. 1, L. 1963	96	2(c-d)	Rep. Ch. 177, Sec. 51, L. 1965
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	Ch. IV 1-16	Rep. Ch. 197, Sec. 12-109, L. 1965	114	1	Rep. Ch. 260, Sec. 12, L. 1967
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	16	Rep. Ch. 197, Sec. 12-109, L. 1965	141	Ch. I 2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
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	Ch. V 1-5	Rep. Ch. 197, Sec. 12-109, L. 1965		62	Rep. Ch. 264, Sec. 10-102, L. 1963
	Ch. VI 2-10	Rep. Ch. 197, Sec. 12-109, L. 1965	158	4	Rep. Ch. 138, Sec. 5, L. 1967
	12-14	Rep. Ch. 197, Sec. 12-109, L. 1965	172	Ch. I 2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
	16	Rep. Ch. 197, Sec. 12-109, L. 1965		Ch. II 1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
146	1-5	Rep. Ch. 197, Sec. 223, L. 1967		Ch. II 12-13	Rep. Ch. 197, Sec. 12-109, L. 1965
1917				Ch. IV 1-13	Rep. Ch. 197, Sec. 12-109, L. 1965
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2	1	Rep. Ch. 199, Sec. 101, L. 1965		Ch. XII 1-7	Rep. Ch. 197, Sec. 12-109, L. 1965
9	1	Rep. Ch. 135, Sec. 2, L. 1967		9-26	Rep. Ch. 197, Sec. 12-109, L. 1965
26	1	Rep. Ch. 197, Sec. 223, L. 1967	173	51	26-701
37	1	S. M.R.Civ.P., Rule 4 D		52-53	Rep. Ch. 38, Sec. 2, L. 1963
	2-3	Rep. Ch. 189, Sec. 2, L. 1963		54	26-704
	4-5	S. M.R.Civ.P., Rule 4 D		55	26-705
44	1	Unconstitutional, 246 F Supp 396		57	Rep. Ch. 38, Sec. 2, L. 1963
46	1-6	Rep. Ch. 271, Sec. 33, L. 1963	1919		
57	1	Rep. Ch. 199, Sec. 101, L. 1965	Ch.	Sec.	Herein
60	1	Rep. Ch. 199, Sec. 101, L. 1965	27	1-10	Rep. Ch. 197, Sec. 223, L. 1967
63	1-6	Rep. Ch. 197, Sec. 12-109, L. 1965	41	1	Rep. Ch. 199, Sec. 101, L. 1965
90	13-14	Rep. Ch. 147, Sec. 242, L. 1963	52	1	Rep. Ch. 129, Sec. 1, L. 1963
	17	Rep. Ch. 147, Sec. 242, L. 1963	76	1	Rep. Ch. 197, Sec. 223, L. 1967
103	1	Rep. Ch. 197, Sec. 223, L. 1967	86	1-2	Rep. Ch. 107, Sec. 18, L. 1965
106	1	Rep. Ch. 197, Sec. 12-109, L. 1965	101	1	Rep. Ch. 266, Sec. 82, L. 1963
115	1	Rep. Ch. 1, Sec. 4, L. 1965		2-3	Rep. Ch. 199, Sec. 101, L. 1965
116	1	Rep. Ch. 129, Sec. 1, L. 1963		4	Rep. Ch. 266, Sec. 82, L. 1963
123	1	Rep. Ch. 127, Sec. 1, L. 1967		6-10	Rep. Ch. 266, Sec. 82, L. 1963
124	10	Rep. Ch. 184, Sec. 8, L. 1961		11	Rep. Ch. 199, Sec. 101, L. 1965
	12	Rep. Ch. 184, Sec. 8, L. 1961		12-14	Rep. Ch. 266, Sec. 82, L. 1963
126	1-3	Rep. Ch. 197, Sec. 223, L. 1967		15	Rep. Ch. 199, Sec. 101, L. 1965
137	1-4	Rep. Ch. 260, Sec. 12, L. 1967		16	Rep. Ch. 266, Sec. 82, L. 1963
152	111	Rep. Ch. 67, Sec. 11, L. 1967		18-28	Rep. Ch. 199, Sec. 101, L. 1965
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109	1-3	Rep. Ch. 129, Sec. 1, L. 1963	42	1	Rep. Ch. 199, Sec. 101, L. 1965
112	1	Rep. Ch. 129, Sec. 1, L. 1963	43	1	Rep. Ch. 199, Sec. 101, L. 1965
122	1	Rep. Ch. 129, Sec. 1, L. 1963	61	1	Rep. Ch. 266, Sec. 82, L. 1963
126	1	Rep. Ch. 129, Sec. 1, L. 1963	62	1	Rep. Ch. 199, Sec. 101, L. 1965
131	1	Rep. Ch. 129, Sec. 1, L. 1963	65	1	Rep. Ch. 79, Sec. 1, L. 1961
143	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965	68	1	Rep. Ch. 266, Sec. 82, L. 1963
146	1	Rep. Ch. 264, Sec. 10-102, L. 1963	85	1	Rep. Ch. 251, Sec. 28, L. 1961
152	1	Rep. Ch. 264, Sec. 10-102, L. 1963	108	2	Rep. Ch. 80, Sec. 14, L. 1961
154	1	Rep. Ch. 202, Sec. 3, L. 1959	124	1	Rep. Ch. 197, Sec. 223, L. 1967
155	1	Rep. Ch. 160, Sec. 24, L. 1965	131	1	Rep. Ch. 80, Sec. 14, L. 1961
	4	Rep. Ch. 307, Sec. 27, L. 1967	133	1	Rep. Ch. 190, Sec. 1, L. 1959
157	1-3	Rep. Ch. 197, Sec. 223, L. 1967	146	1-2	S. Ch. 137, L. 1949
160	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	147	21	Rep. Ch. 136, Sec. 1, L. 1961
162	1	Rep. Ch. 266, Sec. 82, L. 1963	163	1	Rep. Ch. 158, Sec. 11, L. 1959
	2-6	Rep. Ch. 199, Sec. 101, L. 1965	175	1	Rep. Ch. 122, Sec. 12, L. 1965
177	1	Rep. Ch. 13, Sec. 84, L. 1961	186	1	Rep. Ch. 213, Sec. 9, L. 1963
183	1	Rep. Ch. 264, Sec. 10-102, L. 1963	192	2	Rep. Ch. 194, Sec. 13, L. 1967
205	2-5	Rep. Ch. 158, Sec. 11, L. 1959		4	Rep. Ch. 194, Sec. 13, L. 1967
	8	Rep. Ch. 147, Sec. 242, L. 1963	195	1-23	Rep. Ch. 250, Sec. 24, L. 1953
	10	Rep. Ch. 158, Sec. 11, L. 1959	197	7	Rep. Ch. 177, Sec. 51, L. 1965
226	14	Rep. Ch. 194, Sec. 13, L. 1967	210	2	Rep. Ch. 13, Sec. 84, L. 1961
1919 Ex. Sess.			225	1	Rep. Ch. 13, Sec. 84, L. 1961
Ch.	Sec.	Herein		2	S. M.R.App.Civ.P.
4	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965		3-4	S. M.R.App.Civ.P., Rules 9, 10, 25
5	1-13	S. Ch. 137, L. 1949		7	Rep. Ch. 13, Sec. 84, L. 1961
15	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965		9	S. M.R.App.Civ.P., Rules 9, 10, 25
26	1	Rep. Ch. 189, Sec. 2, L. 1959		10	S. M.R.App.Civ.P., Rule 1
1921				11	S. M.R.App.Civ.P., Rule 5
Ch.	Sec.	Herein		13-14	S. M.R.App.Civ.P., Rules 9, 10, 25
6	1	Rep. Ch. 194, Sec. 13, L. 1967	229	1-2	Rep. Ch. 177, Sec. 51, L. 1965
9	1	Rep. Ch. 80, Sec. 14, L. 1961		3-4	Rep. Ch. 68, Sec. 10, L. 1967
35	1	Rep. Ch. 68, Sec. 10, L. 1967	256	1-3	Rep. Ch. 307, Sec. 27, L. 1967

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Ch.	Sec.	Herein	106	1	Rep. Ch. 194, Sec. 13, L. 1967
1	1	Rep. Ch. 156, Sec. 11, L. 1965	109	6	Rep. Ch. 97, Sec. 32, L. 1961
10	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965	113	14	Rep. Ch. 256, Sec. 5, L. 1965
	13-16	Rep. Ch. 197, Sec. 12-109, L. 1965	114	1	Rep. Ch. 75, Sec. 5, L. 1967
	18	Rep. Ch. 197, Sec. 12-109, L. 1965	116	1	Rep. Ch. 264, Sec. 10-102, L. 1963
12	2	Rep. Ch. 75, Sec. 1, L. 1961	126	1-2	Rep. Ch. 199, Sec. 101, L. 1965
1923				3	Rep. Ch. 266, Sec. 82, L. 1963
Ch.	Sec.	Herein	128	1	Rep. Ch. 197, Sec. 12-109, L. 1965
24	1-6	Rep. Ch. 197, Sec. 223, L. 1967	129	1	Rep. Ch. 197, Sec. 12-109, L. 1965
32	1	Rep. Ch. 264, Sec. 10-102, L. 1963	144	1-2	Rep. Ch. 147, Sec. 242, L. 1963
42	1	Rep. Ch. 199, Sec. 101, L. 1965	145	1	Rep. Ch. 264, Sec. 10-102, L. 1963
49	1	Rep. Ch. 127, Sec. 1, L. 1967	146	1	S. M.R.App.Civ.P., Rules 9, 10, 25
55	1	Rep. Ch. 189, Sec. 2, L. 1963	148	1	Unconstitutional, 134 M 355, 332 P 2d 501
56	1	Rep. Ch. 260, Sec. 12, L. 1967	149	1	Rep. Ch. 266, Sec. 82, L. 1963
61	1	Rep. Ch. 44, Sec. 7, L. 1961	159	1	Rep. Ch. 156, Sec. 11, L. 1965
77	20-21	Rep. Ch. 38, Sec. 2, L. 1963	185	1-4	S. Ch. 137, L. 1949
100	1	Rep. Ch. 264, Sec. 10-102, L. 1963	1927		
104	1	Rep. Ch. 75, Sec. 1, L. 1961	Ch.	Sec.	Herein
110	1-8	Rep. Ch. 147, Sec. 242, L. 1963	4	1	Rep. Ch. 189, Sec. 2, L. 1959
143	1	Rep. Ch. 264, Sec. 10-102, L. 1963	8	1-7	Rep. Ch. 228, Sec. 8, L. 1967
145	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967	18	1	Rep. Ch. 197, Sec. 12-109, L. 1965
148	1	Rep. Ch. 264, Sec. 10-102, L. 1963		2	Rep. Ch. 42, Sec. 2, L. 1961
1925				3	Rep. Ch. 197, Sec. 12-109, L. 1965
Ch.	Sec.	Herein	19	13	Rep. Ch. 197, Sec. 12-109, L. 1965
1	1-3	Rep. Ch. 305, Sec. 2, L. 1967	51	1	Rep. Ch. 147, Sec. 242, L. 1963
13	1	Rep. Ch. 197, Sec. 12-109, L. 1965	59	23-24	Rep. Ch. 38, Sec. 2, L. 1963
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25		27	Rep. Ch. 38, Sec. 2, L. 1963
34	1	Rep. Ch. 197, Sec. 223, L. 1967	60	30	Rep. Ch. 257, Sec. 10, L. 1965
39	1	S. M.R.App.Civ.P., Rule 5		74	Rep. Ch. 184, Sec. 8, L. 1961
40	1-2	Rep. Ch. 250, Sec. 24, L. 1963		77	Rep. Ch. 184, Sec. 8, L. 1961

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	89-90	Rep. Ch. 264, Sec. 10-102, L. 1963	96	1	Rep. Ch. 129, Sec. 1, L. 1963
	116	Rep. Ch. 264, Sec. 10-102, L. 1963	103	1	Rep. Ch. 196, Sec. 15, L. 1965
90	1	Rep. Ch. 129, Sec. 1, L. 1963	104	10	Rep. Ch. 177, Sec. 51, L. 1965
102	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	105	1-28	Rep. Ch. 236, Sec. 30, L. 1963
103	12	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	121	1-6	Rep. Ch. 101, Sec. 1, L. 1959
109	1-2	Rep. Ch. 153, Sec. 14, L. 1965	124	2	Rep. Ch. 229, Sec. 14, L. 1967
	3	Rep. Ch. 174, Sec. 16, L. 1961	149	1	Rep. Ch. 199, Sec. 101, L. 1965
	6-7b	Rep. Ch. 174, Sec. 16, L. 1961	151	4-7	Rep. Ch. 44, Sec. 7, L. 1961
112	1-3	Rep. Ch. 1, Sec. 4, L. 1965	173	1-5	Rep. Ch. 15, Sec. 1, L. 1959
124	3	Rep. Ch. 147, Sec. 242, L. 1963	176	1	Rep. Ch. 197, Sec. 12-109, L. 1965
126	2	Rep. Ch. 156, Sec. 11, L. 1965	177	4	Rep. Ch. 197, Sec. 1, L. 1959
	6-7	Rep. Ch. 156, Sec. 11, L. 1965	178	1	Rep. Ch. 197, Sec. 12-109, L. 1965
149	2	Rep. Ch. 271, Sec. 33, L. 1963	179	1-5	Rep. Ch. 251, Sec. 28, L. 1961
	4	Rep. Ch. 271, Sec. 33, L. 1963	<hr/>		
151	1-3	Rep. Ch. 202, Sec. 3, L. 1959	1931		
152	1-4	Rep. Ch. 15, Sec. 1, L. 1959	Ch.	Sec.	Herein
<hr/>			9	1	Rep. Ch. 147, Sec. 242, L. 1963
1929			32	1	Rep. Ch. 260, Sec. 12, L. 1967
Ch.	Sec.	Herein	46	1	Rep. Ch. 264, Sec. 10-102, L. 1963
21	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	59	1	Rep. Ch. 13, Sec. 84, L. 1961
27	8	Rep. Ch. 177, Sec. 51, L. 1965	60	1	Rep. Ch. 199, Sec. 101, L. 1965
59	1	Rep. Ch. 197, Sec. 12-109, L. 1965	70	2-3	Rep. Ch. 189, Sec. 2, L. 1963
60	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	75	1	S. Ch. 137, L. 1949
70	4-5	Rep. Ch. 147, Sec. 242, L. 1963	93	1	Rep. Ch. 197, Sec. 223, L. 1967
	10	Rep. Ch. 147, Sec. 242, L. 1963	106	1-4	Rep. Ch. 264, Sec. 10-102, L. 1963
73	2	Rep. Ch. 307, Sec. 27, L. 1967	107	1	Rep. Ch. 264, Sec. 10-102, L. 1963
80	1-6	Rep. Ch. 197, Sec. 223, L. 1967	110	1	Rep. Ch. 174, Sec. 16, L. 1961
81	1	Rep. Ch. 197, Sec. 12-109, L. 1965	118	1-3	Rep. Ch. 197, Sec. 223, L. 1967
82	1-2	Rep. Ch. 199, Sec. 101, L. 1965	144	1	Rep. Ch. 197, Sec. 12-109, L. 1965
83	1	Rep. Ch. 202, Sec. 3, L. 1959	151	1-8	Rep. Ch. 199, Sec. 101, L. 1965
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176	2	Rep. Ch. 80, Sec. 14, L. 1961	1935		
177	1	Rep. Ch. 199, Sec. 1, L. 1961	Ch.	Sec.	Herein
179	1	Rep. Ch. 197, Sec. 12-109, L. 1965	6	1	Rep. Ch. 1, Sec. 4, L. 1965
184	4	Rep. Ch. 201, Sec. 7, L. 1961	12	1	Rep. Ch. 199, Sec. 101, L. 1965
	6	Rep. Ch. 201, Sec. 7, L. 1961	26	1-7	S. Ch. 137, L. 1949
188	2	Rep. Ch. 197, Sec. 12-109, L. 1965	45	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
192	1	Rep. Ch. 174, Sec. 16, L. 1961	57	2	Rep. Ch. 202, Sec. 3, L. 1959
194	1-3	Rep. Ch. 251, Sec. 28, L. 1961	59	1	Rep. Ch. 266, Sec. 82, L. 1963
196	1	Rep. Ch. 15, Sec. 1, L. 1959	65	2	Rep. Ch. 147, Sec. 242, L. 1963
	2	Rep. Ch. 199, Sec. 101, L. 1965	67	1-7	Rep. Ch. 55, Sec. 3, L. 1965
1933			94	1	Rep. Ch. 15, Sec. 1, L. 1959
Ch.	Sec.	Herein	103	1	Rep. Ch. 13, Sec. 84, L. 1961
2	1	Rep. Ch. 197, Sec. 12-109, L. 1965	107	1	Rep. Ch. 197, Sec. 12-109, L. 1965
7	1	Rep. Ch. 250, Sec. 24, L. 1963	112	1	Rep. Ch. 264, Sec. 10-102, L. 1963
26	1	Rep. Ch. 197, Sec. 223, L. 1967	127	3-6	Rep. Ch. 184, Sec. 8, L. 1961
34	1	Rep. Ch. 13, Sec. 84, L. 1961	147	2	Rep. Ch. 174, Sec. 16, L. 1961
47	1-8	Rep. Ch. 251, Sec. 28, L. 1961	169	7	Rep. Ch. 147, Sec. 242, L. 1963
105	18-27	Rep. Ch. 154, Sec. 17, L. 1965	176	1-9	Rep. Ch. 19, Sec. 10, L. 1967
	52	Rep. Ch. 154, Sec. 17, L. 1965	180	1-6	Rep. Ch. 199, Sec. 101, L. 1965
	57	Rep. Ch. 154, Sec. 17, L. 1965	182	14	Rep. Ch. 20, Sec. 3, L. 1959
	60-61	Rep. Ch. 154, Sec. 17, L. 1965	198	1-5	Rep. Ch. 199, Sec. 101, L. 1965
	63	Rep. Ch. 154, Sec. 17, L. 1965	1937		
	96	Rep. Ch. 147, Sec. 242, L. 1963	Ch.	Sec.	Herein
110	1	Rep. Ch. 174, Sec. 16, L. 1961	3	1	Rep. Ch. 154, Sec. 17, L. 1965
126	1-6	Rep. Ch. 101, Sec. 1, L. 1959	8	1	Rep. Ch. 13, Sec. 84, L. 1961
134	1	S. Ch. 137, L. 1949	10	4	Rep. Ch. 189, Sec. 2, L. 1963
146	1	Rep. Ch. 80, Sec. 14, L. 1961	33	1	Rep. Ch. 80, Sec. 14, L. 1961
153	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	40	2-3	Rep. Ch. 82, Sec. 4, L. 1961
167	1-3	Rep. Ch. 158, Sec. 11, L. 1959	42	1-11	Unconstitutional, 139 M 15, 359 P 2d 644
178	27	Rep. Ch. 151, Sec. 8, L. 1961	44	1	Rep. Ch. 1, Sec. 4, L. 1965

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	4	Rep. Ch. 80, Sec. 14, L. 1961	144	1	Rep. Ch. 194, Sec. 13, L. 1967
50	1-2	Rep. Ch. 1, Sec. 4, L. 1965	146	3	Rep. Ch. 147, Sec. 242, L. 1963
86	1-11	Rep. Ch. 72, Sec. 1, L. 1959		11	Rep. Ch. 160, Sec. 24, L. 1965
102	1	Rep. Ch. 197, Sec. 12-109, L. 1965		13	Rep. Ch. 160, Sec. 24, L. 1965
118	1-23	Rep. Ch. 280, Sec. 10, L. 1967		25	Rep. Ch. 160, Sec. 24, L. 1965
120	1	Rep. Ch. 251, Sec. 28, L. 1961	158	1-12	Rep. Ch. 274, Sec. 20, L. 1965
137	15(d)	Rep. Ch. 156, Sec. 9, L. 1961	170	1	Rep. Ch. 194, Sec. 13, L. 1967
161	1	Rep. Ch. 177, Sec. 51, L. 1965	172	23	Rep. Ch. 264, Sec. 10-102, L. 1963
171	1	Rep. Ch. 13, Sec. 84, L. 1961	177	3	Rep. Ch. 44, Sec. 7, L. 1961
196	1-2	Rep. Ch. 199, Sec. 101, L. 1965		5-8	Rep. Ch. 44, Sec. 7, L. 1961
204	1-7	Rep. Ch. 81, Sec. 1, L. 1959	180	1	Rep. Ch. 129, Sec. 1, L. 1963
1939			183	1-5	Rep. Ch. 55, Sec. 3, L. 1965
Ch.	Sec.	Herein	186	1	Rep. Ch. 13, Sec. 84, L. 1961
23	1	Rep. Ch. 1, Sec. 4, L. 1965	204	12	Rep. Ch. 192, Sec. 14, L. 1959
28	1	Rep. Ch. 13, Sec. 84, L. 1961		19	Rep. Ch. 192, Sec. 14, L. 1959
35	1	Rep. Ch. 197, Sec. 12-109, L. 1965	208	28	Rep. Ch. 147, Sec. 242, L. 1963
	2	Repealing Clause	213	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	3	Rep. Ch. 197, Sec. 12-109, L. 1965	222	9	Rep. Ch. 177, Sec. 51, L. 1965
	4	Repealing Clause	1941		
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38	3	Rep. Ch. 129, Sec. 1, L. 1963	3	1	Rep. Ch. 264, Sec. 10-102, L. 1963
61	1	Rep. Ch. 13, Sec. 84, L. 1961	5	1	71-1001 to 71-1008
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66	1	Rep. Ch. 68, Sec. 10, L. 1967		3	Effective Date
92	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
103	1-3	Rep. Ch. 163, Sec. 1, L. 1959	36	1	Rep. Ch. 264, Sec. 10-102, L. 1963
117	9	Rep. Ch. 213, Sec. 9, L. 1963	37	1-4	Rep. Ch. 194, Sec. 13, L. 1967
127	1-8	Rep. Ch. 197, Sec. 223, L. 1967	41	1	S. M.R.App.Civ.P., Rule 1
131	1	Rep. Ch. 271, Sec. 33, L. 1963	49	2	Rep. Ch. 252, Sec. 2, L. 1967
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	5	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	56	1-9	Temporary
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	11-12	Rep. Ch. 41, Sec. 24, L. 1963	114	1-2	Rep. Ch. 197, Sec. 223, L. 1967
70	1-15	Rep. Ch. 197, Sec. 223, L. 1967	115	1-23	Rep. Ch. 264, Sec. 10-102, L. 1963
81	1	Rep. Ch. 177, Sec. 51, L. 1965		26	Rep. Ch. 264, Sec. 10-102, L. 1963
97	1	Rep. Ch. 199, Sec. 101, L. 1965	116	1	Rep. Ch. 199, Sec. 1, L. 1961
102	1	Rep. Ch. 264, Sec. 10-102, L. 1963	120	2	Rep. Ch. 147, Sec. 242, L. 1963
110	1	Rep. Ch. 13, Sec. 84, L. 1961	125	1-4	Rep. Ch. 197, Sec. 223, L. 1967
111	1	Rep. Ch. 197, Sec. 12-109, L. 1965	126	1	Rep. Ch. 107, Sec. 18, L. 1965
115	1	Rep. Ch. 199, Sec. 1, L. 1961	140	1	Rep. Ch. 13, Sec. 84, L. 1961
164	9(d)	Rep. Ch. 156, Sec. 9, L. 1961	151	1	Rep. Ch. 41, Sec. 24, L. 1963
1943			156	1	Rep. Ch. 266, Sec. 82, L. 1963
Ch.	Sec.	Herein		2-6	Rep. Ch. 199, Sec. 101, L. 1965
1	1-2	Rep. Ch. 1, Sec. 4, L. 1965	157	9	Rep. Ch. 213, Sec. 9, L. 1963
3	1-2	Rep. Ch. 1, Sec. 4, L. 1965	165	3	Rep. Ch. 266, Sec. 82, L. 1963
9	1	Rep. Ch. 67, Sec. 11, L. 1967	171	1	Rep. Ch. 38, Sec. 2, L. 1963
10	3	Rep. Ch. 213, Sec. 9, L. 1963	175	1	Rep. Ch. 197, Sec. 12-109, L. 1965
11	1	Rep. Ch. 199, Sec. 101, L. 1965	180	1	Rep. Ch. 13, Sec. 84, L. 1961
17	1-2	Rep. Ch. 13, Sec. 84, L. 1961	182	13	Rep. Ch. 147, Sec. 242, L. 1963
24	1-2	Rep. Ch. 32, Sec. 1, L. 1953	183	1	Rep. Ch. 266, Sec. 82, L. 1963
	4-5	Rep. Ch. 32, Sec. 1, L. 1953		2	Rep. Ch. 199, Sec. 101, L. 1965
31	1	Rep. Ch. 280, Sec. 10, L. 1967		3	Rep. Ch. 266, Sec. 82, L. 1963
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69	1	Rep. Ch. 199, Sec. 101, L. 1965		13-16	Rep. Ch. 199, Sec. 101, L. 1965
70	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963		17-18	Rep. Ch. 266, Sec. 82, L. 1963
76	1	Rep. Ch. 199, Sec. 101, L. 1965	184	10-11	Rep. Ch. 147, Sec. 242, L. 1963
	3	Rep. Ch. 213, Sec. 9, L. 1963		13	Rep. Ch. 147, Sec. 242, L. 1963
102	1-7	Rep. Ch. 197, Sec. 223, L. 1967	199	11	Rep. Ch. 102, Sec. 1, L. 1959
107	1	Rep. Ch. 199, Sec. 101, L. 1965	202	1-3	Rep. Ch. 260, Sec. 12, L. 1967
110	1	Rep. Ch. 199, Sec. 101, L. 1965	209	1-2	Rep. Ch. 266, Sec. 82, L. 1963

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226	1	Rep. Ch. 38, Sec. 2, L. 1963	171	1-14	Rep. Ch. 197, Sec. 223, L. 1967
228	1-10	Rep. Ch. 127, Sec. 15, L. 1963	174	1-2	Omitted
233	4	Rep. Ch. 156, Sec. 9, L. 1961	181	1	Rep. Ch. 199, Sec. 1, L. 1961
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		1945	198	1	Rep. Ch. 266, Sec. 82, L. 1963
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2	1-4	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963		8	Rep. Ch. 266, Sec. 82, L. 1963
11	1	Rep. Ch. 199, Sec. 101, L. 1965	202	1-3	Rep. Ch. 197, Sec. 223, L. 1967
38	14	Rep. Ch. 188, Sec. 4, L. 1959	203	1-4	Rep. Ch. 197, Sec. 223, L. 1967
42	1	Rep. Ch. 199, Sec. 101, L. 1965	204	1	Rep. Ch. 271, Sec. 33, L. 1963
57	1	Rep. Ch. 266, Sec. 82, L. 1963		3-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
69	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965		10-11	Rep. Ch. 271, Sec. 33, L. 1963
72	1	Rep. Ch. 199, Sec. 101, L. 1965	212	18	68-701, 68-702, 68- 704 to 68-709
74	1	Rep. Ch. 42, Sec. 2, L. 1961	213	1-6	Unconstitutional, 130 M 402, 303 P 2d 938
78	1-6	Rep. Ch. 271, Sec. 33, L. 1963	<hr/>		
81	1	Rep. Ch. 199, Sec. 101, L. 1965			1947
86	1-7	Rep. Ch. 197, Sec. 12-109, L. 1965	Ch.	Sec.	Herein
87	1	Rep. Ch. 197, Sec. 12-109, L. 1965	15	1	Rep. Ch. 189, Sec. 2, L. 1963
91	3-4	Rep. Ch. 215, Sec. 3, L. 1965	16	1	Rep. Ch. 13, Sec. 84, L. 1961
92	1	Rep. Ch. 13, Sec. 84, L. 1961	21	1	Rep. Ch. 197, Sec. 223, L. 1967
96	1	Rep. Ch. 199, Sec. 101, L. 1965	30	1	Rep. Ch. 68, Sec. 10, L. 1967
102	1	Rep. Ch. 38, Sec. 2, L. 1963	51	1	Rep. Ch. 199, Sec. 1, L. 1961
111	3	Rep. Ch. 80, Sec. 14, L. 1961	53	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963
	4	Rep. Ch. 177, Sec. 51, L. 1965	56	1	16-1008, 16-1008A
113	1	Unconstitutional, 246 F Supp 396	59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
119	1-5	Rep. Ch. 107, Sec. 18, L. 1965	61	1	Rep. Ch. 260, Sec. 12, L. 1967
127	1-2	Rep. Ch. 197, Sec. 223, L. 1967	62	1	Rep. Ch. 199, Sec. 101, L. 1965
133	1-4	Rep. Ch. 267, Sec. 16, L. 1963	68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963	72	1-2	Rep. Ch. 55, Sec. 3, L. 1965
148	1-8	Rep. Ch. 55, Sec. 1, L. 1959	75	Preamble, 1-2	Rep. Ch. 47, Sec. 14, L. 1963
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103	1-3	Rep. Ch. 199, Sec. 101, L. 1965		8-18	Rep. Ch. 197, Sec. 223, L. 1967
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139	1	Rep. Ch. 305, Sec. 2, L. 1967	297	6	68-701, 68-702, 68- 704 to 68-709
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145	1	Rep. Ch. 197, Sec. 12-109, L. 1965	1949		
149	1	Rep. Ch. 197, Sec. 12-109, L. 1965	Ch.	Sec.	Herein
157	1	Rep. Ch. 147, Sec. 242, L. 1963	14	1	Rep. Ch. 260, Sec. 12, L. 1967
168	1	Rep. Ch. 174, Sec. 16, L. 1961	20	1	Rep. Ch. 272, Sec. 2, L. 1959
173	1	Rep. Ch. 68, Sec. 10, L. 1967	30	1	Rep. Ch. 3, Sec. 3, L. 1965
175	1	Rep. Ch. 251, Sec. 28, L. 1961	57	1-6	Rep. Ch. 197, Sec. 223, L. 1967
182	1	Rep. Ch. 38, Sec. 2, L. 1963	66	1	Rep. Ch. 189, Sec. 2, L. 1963
189	1	Rep. Ch. 197, Sec. 223, L. 1967	82	1	Rep. Ch. 266, Sec. 82, L. 1963
191	1	Rep. Ch. 197, Sec. 223, L. 1967	84	1	Rep. Ch. 13, Sec. 84, L. 1961
192	1-6	Rep. Ch. 162, Sec. 17, L. 1965		2-3	Rep. Ch. 199, Sec. 101, L. 1965
203	1	Rep. Ch. 199, Sec. 101, L. 1965	105	1	Rep. Ch. 197, Sec. 223, L. 1967
214	1	Rep. Ch. 199, Sec. 101, L. 1965	113	1	Rep. Ch. 154, Sec. 1, L. 1959
217	1	Rep. Ch. 218, Sec. 4, L. 1957	116	1	Rep. Ch. 199, Sec. 101, L. 1965
218	1-10	Rep. Ch. 237, Sec. 28, L. 1961	127	1	Rep. Ch. 280, Sec. 10, L. 1967
220	14	Rep. Ch. 149, Sec. 4, L. 1959	128	1	Rep. Ch. 129, Sec. 1, L. 1963
221	1	Rep. Ch. 256, Sec. 5, L. 1965	134	1-15	Rep. Ch. 47, Sec. 14, L. 1963
235	1	Rep. Ch. 177, Sec. 51, L. 1965	135	1	S. M.R.Civ.P., Rule 4 D
	8	Rep. Ch. 197, Sec. 1, L. 1959	136	3	Rep. Ch. 147, Sec. 242, L. 1963
238	1-2	16-1008A	142	7	Rep. Ch. 187, Sec. 2, L. 1959
240	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	149	1	Rep. Ch. 264, Sec. 10-102, L. 1963
258	1-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	153	7	Rep. Ch. 147, Sec. 242, L. 1963
	10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	170	1-4	Temporary
264	1	Rep. Ch. 42, Sec. 2, L. 1961	172	1-3	Rep. Ch. 197, Sec. 223, L. 1967
268	1	Rep. Ch. 199, Sec. 101, L. 1965	180	1	Rep. Ch. 199, Sec. 1, L. 1961
269	1-19	Rep. Ch. 197, Sec. 223, L. 1967	181	1	Rep. Ch. 199, Sec. 1, L. 1961
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	4	Rep. Ch. 257, Sec. 10, L. 1965		7-9	Rep. Ch. 197, Sec. 12-109, L. 1965
191	2	Rep. Ch. 184, Sec. 8, L. 1961		11	Rep. Ch. 206, Sec. 27, L. 1963
205	1	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963		14-15	Rep. Ch. 197, Sec. 12-109, L. 1965
	2-3	Appropriation	222	1-18	Rep. Ch. 208, Sec. 3, L. 1961
206	6	Rep. Ch. 199, Sec. 101, L. 1965	227	1-3	Rep. Ch. 147, Sec. 242, L. 1963
	7-10	Rep. Ch. 230, Sec. 1, L. 1959	<hr/>		
	11	Rep. Ch. 199, Sec. 101, L. 1965	1951 Appendix		
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19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	7	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
25	1	Rep. Ch. 197, Sec. 12-109, L. 1965	8	1	Rep. Ch. 156, Sec. 11, L. 1965
42	1	Rep. Ch. 127, Sec. 15, L. 1963	9	1	Rep. Ch. 13, Sec. 84, L. 1961
62	1	Rep. Ch. 280, Sec. 22, L. 1965	11	1	Rep. Ch. 199, Sec. 1, L. 1961
73	1	Rep. Ch. 199, Sec. 101, L. 1965	16	1	Rep. Ch. 13, Sec. 84, L. 1961
122	1	S. M.R.Civ.P., Rule 4 D	31	1-15	Rep. Ch. 197, Sec. 12-109, L. 1965
	2	Rep. Ch. 189, Sec. 2, L. 1963	35	1	Rep. Ch. 199, Sec. 101, L. 1965
127	1-3	Rep. Ch. 127, Sec. 15, L. 1963	41	2	Rep. Ch. 290, Sec. 6, L. 1967
129	1	Rep. Ch. 55, Sec. 3, L. 1965	52	1	Rep. Ch. 280, Sec. 22, L. 1965
130	1	Rep. Ch. 160, Sec. 24, L. 1965	53	1	Rep. Ch. 280, Sec. 22, L. 1965
138	1	Rep. Ch. 280, Sec. 10, L. 1967	55	1	Rep. Ch. 156, Sec. 11, L. 1965
148	2	Rep. Ch. 147, Sec. 242, L. 1963	77	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
154	1-7	Rep. Ch. 197, Sec. 223, L. 1967	78	1	Rep. Ch. 78, Sec. 9, L. 1965
168	1-5	Rep. Ch. 232, Sec. 9, L. 1961	84	1	Rep. Ch. 197, Sec. 12-109, L. 1965
191	1-2	Rep. Ch. 194, Sec. 13, L. 1967	86	1-3	Rep. Ch. 199, Sec. 101, L. 1965
194	5	Rep. Ch. 81, Sec. 3, L. 1961	103	1	Rep. Ch. 189, Sec. 2, L. 1963
	7-10	Rep. Ch. 158, Sec. 2, L. 1959	117	1	Rep. Ch. 197, Sec. 12-109, L. 1965
201	1-17	Unconstitutional, 127 M 504, 267 P 2d 724	118	1	Rep. Ch. 197, Sec. 12-109, L. 1965
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	5-9	Rep. Ch. 197, Sec. 12-109, L. 1965	30	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
138	1	Rep. Ch. 97, Sec. 32, L. 1961	33	1	Rep. Ch. 197, Sec. 12-109, L. 1965
139	1	Rep. Ch. 197, Sec. 12-109, L. 1965	49	1	Rep. Ch. 213, Sec. 9, L. 1963
142	1	Rep. Ch. 189, Sec. 2, L. 1959	59	1	Rep. Ch. 197, Sec. 223, L. 1967
150	1	Rep. Ch. 250, Sec. 24, L. 1963	66	5	Rep. Ch. 97, Sec. 32, L. 1961
151	1	Rep. Ch. 189, Sec. 2, L. 1963	85	1	S. M.R.App.Civ.P., Rules 9, 10, 25
162	1-18	Rep. Ch. 199, Sec. 101, L. 1965	88	1	Rep. Ch. 42, Sec. 2, L. 1961
165	1	Rep. Ch. 147, Sec. 242, L. 1963	89	1	Rep. Ch. 197, Sec. 12-109, L. 1965
166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	91	1	Rep. Ch. 197, Sec. 12-109, L. 1965
173	1	Rep. Ch. 274, Sec. 20, L. 1965	92	5	68-701, 68-702, 68-704 to 68-710
176	2	68-701, 68-702, 68-704 to 68-709	96	1-2	Rep. Ch. 47, Sec. 14, L. 1963
181	1	Rep. Ch. 197, Sec. 223, L. 1967	104	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
186	1-2	Rep. Ch. 213, Sec. 9, L. 1963	106	1-3	Rep. Ch. 197, Sec. 12-109, L. 1965
189	1-4	Rep. Ch. 271, Sec. 33, L. 1963	109	1	Rep. Ch. 197, Sec. 12-109, L. 1965
197	1	Rep. Ch. 82, Sec. 4, L. 1961	110	1	Rep. Ch. 97, Sec. 32, L. 1961
212	1	Rep. Ch. 42, Sec. 2, L. 1961	112	1	Rep. Ch. 154, Sec. 17, L. 1965
214	13-15	Rep. Ch. 156, Sec. 11, L. 1965	116	1	Rep. Ch. 38, Sec. 2, L. 1963
226	1-6	Rep. Ch. 232, Sec. 9, L. 1961	117	1	Rep. Ch. 199, Sec. 101, L. 1965
229	1	Rep. Ch. 189, Sec. 2, L. 1963		3	Rep. Ch. 199, Sec. 101, L. 1965
231	1	Rep. Ch. 197, Sec. 12-109, L. 1965	118	1	Rep. Ch. 199, Sec. 101, L. 1965
235	1	Rep. Ch. 199, Sec. 101, L. 1965	119	1-4	Rep. Ch. 307, Sec. 27, L. 1967
238	16	Rep. Ch. 147, Sec. 242, L. 1963	129	2-3	Rep. Ch. 213, Sec. 9, L. 1963
240	1	Rep. Ch. 197, Sec. 12-109, L. 1965	130	1-2	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
241	1	Rep. Ch. 42, Sec. 2, L. 1961	131	2-3	Rep. Ch. 153, Sec. 14, L. 1965
242	2	Rep. Ch. 266, Sec. 82, L. 1963	133	1	Rep. Ch. 266, Sec. 82, L. 1963
249	1	Rep. Ch. 199, Sec. 101, L. 1965		2	Rep. Ch. 199, Sec. 101, L. 1965
251	1-15	Rep. Ch. 3, Sec. 9, Ex. L. 1967	136	1	Rep. Ch. 236, Sec. 30, L. 1963
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Ch.	Sec.	Herein	142	1-16	Rep. Ch. 197, Sec. 223, L. 1967
2	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	151	1	Rep. Ch. 236, Sec. 30, L. 1963
			154	1	Rep. Ch. 199, Sec. 101, L. 1965

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175	1	Rep. Ch. 197, Sec. 12-109, L. 1965		9	Rep. Ch. 271, Sec. 33, L. 1963
177	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
179	1	Rep. Ch. 163, Sec. 1, L. 1959			
181	1	Rep. Ch. 264, Sec. 10-102, L. 1963			
183	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
	5	Rep. Ch. 197, Sec. 12-109, L. 1965			
186	1	Rep. Ch. 232, Sec. 9, L. 1961			
	3-6	Rep. Ch. 232, Sec. 9, L. 1961			
187	1	Rep. Ch. 236, Sec. 30, L. 1963			
208	1	Rep. Ch. 199, Sec. 1, L. 1961			
215	1-3	Rep. Ch. 197, Sec. 223, L. 1967			
	4	Rep. Ch. 77, Sec. 14, L. 1965			
	5-11	Rep. Ch. 197, Sec. 223, L. 1967			
227	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963			
237	1	Rep. Ch. 202, Sec. 3, L. 1959			
246	12	Rep. Ch. 126, Sec. 8, L. 1963			
251	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
258	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
261	1	Rep. Ch. 199, Sec. 101, L. 1965			
262	1	Rep. Ch. 201, Sec. 7, L. 1961			
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277	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963			
278	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963			

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REVISED CODES OF MONTANA

VOLUME 1

Part 2

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

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Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the state aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

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1-311. "Commercial air operator" defined. As used in this article "commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

History: En. Sec. 1, Ch. 122, L. 1967.

Title of Act

An act empowering the state aeronautics commission to require commercial

air operators to procure insurance or other adequate protection against liability for the payment of damages for personal bodily injuries, including death and property damage, as a result of an accident.

1-312. "Aircraft" defined. As used in this article, "aircraft" means any contrivance used for navigation of, or flight in, the air.

History: En. Sec. 2, Ch. 122, L. 1967.

1-313. "Person" defined. As used in this article, "person" means any individual, firm, partnership, private, municipal or public corporation, company, association, joint stock association, trustee, receiver, assignee, or other similar representative.

History: En. Sec. 3, Ch. 122, L. 1967.

1-314. Commercial air operators to procure insurance. The state aeronautics commission shall require every commercial air operator to procure, and continue in effect so long as the commercial air operator continues to offer his services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting therefrom, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967.

1-315. Commission to set amount of insurance. The commission shall, after a public hearing, set the amount of liability insurance, required by section 4 [1-314], which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967.

1-316. Submission of evidence of insurance to commission. The protection required under section 4 [1-314] shall be evidenced either by the deposit with the commission, covering each aircraft used or to be used in commercial operations for compensation of:

(a) A copy of the policy of insurance, issued by a company authorized to write such insurance in the state; or

(b) A bond of a surety company authorized to write surety bonds in the state.

(c) Such evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the commission.

History: En. Sec. 6, Ch. 122, L. 1967.

1-317. Copies of insurance policies to be filed with commission. With the consent of the commission a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy thereof, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the commission in lieu of the original or a duplicate or counterpart of the policy.

History: En. Sec. 7, Ch. 122, L. 1967.

1-318. Continuation of insurance—notice to commission upon cancellation. The protection against liability shall be continued in effect so long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable unless than thirty (30) days' written notice to the commission, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967.

1-319. Commission to establish rules. The commission may establish such rules as are necessary to enforce this article.

History: En. Sec. 9, Ch. 122, L. 1967.

1-320. Violations of act. Any commercial air operator who knowingly refuses or fails to procure protection against liability, as required by section 4 [1-314], within six (6) months from the effective date of this article shall be guilty of a misdemeanor, and each day during which said commercial air operator shall continue in such default shall constitute a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967.

1-321. Acceptance of policies by unauthorized insurers. Notwithstanding the provisions of section 6 [1-316], the commission shall have the authority to accept policies of insurance written by unauthorized insurers, provided that the policies of insurance shall meet the rules and regulations promulgated therefor by the commission.

History: En. Sec. 11, Ch. 122, L. 1967.

1-322. Certification and regulation of intrastate air carriers—definitions—operation of act—recognition of federal authority to regulate use of air space. (1) Unless the context otherwise requires, the definitions in chapter 1 of Title 1, R.C.M. 1947, shall govern the construction of this act.

(2) As used in this act, "air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(3) As used in this act, "commission" means the state aeronautics commission.

(4) The provisions of this act do not apply to common carriers of passengers or freight by aircraft who operate within this state pursuant

to the provisions of a current certificate of public convenience and necessity issued by the federal government.

(5) This state recognizes the authority of the federal government to regulate and control safety factors in the operation of aircraft and the use of air space.

History: En. Sec. 1, Ch. 171, L. 1967.

Title of Act

An act to provide for the certification and regulation of intrastate air carriers by the state aeronautics commission.

1-323. Regulatory powers of commission—rates—reports—rules—certificate of public convenience—suspension of certificates—discontinuance of operations—enforcement proceedings—violations and penalties—appeals—charter operators exempt. (1) No air carrier shall operate aircraft except in accordance with the provisions of this act.

(2) The commission may:

(a) Supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight.

(b) After notice to all interested parties and the public, and after hearing, fix the rates, fares, charges, classifications, and rules of each such carrier.

(c) Regulate the accounts of each such carrier, and require the filing of annual and other reports and of other data by such carriers.

(d) By general order or otherwise, prescribe rules applicable to any and all air carriers. The commission, in the exercise of the jurisdiction conferred upon it by this act, may make orders and prescribe rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of any town, city, city and county, or county, and in case of conflict between any such order or rule and any such ordinance or permit, the order or rule of the commission shall prevail.

(3) No air carrier shall engage in any operation in this state without first having obtained from the commission a certificate of public convenience and necessity authorizing such operation.

(4) An applicant shall submit his written verified application to the commission. The application shall be in such form and contain such information and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and such other interested parties as the commission requires.

In awarding certificates of public convenience and necessity pursuant to the foregoing subsection, the commission shall take into consideration, among other things, the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(5) Each application for a certificate of public convenience and neces-

sity made under the provisions of this act shall be accompanied by a fee of one hundred fifty dollars (\$150).

The commission may, after notice to the interested parties and the public, and after hearing, issue the certificate as prayed for. The commission may, after like notice and hearing, refuse to issue the certificate. The commission may, after like notice and hearing, issue the certificate for the partial exercise only of the privilege sought. The commission may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require.

(6) A fee of one hundred fifty dollars (\$150) shall be paid to the commission for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber any certificate.

The commission may, after notice and hearing, approve the application or refuse to approve it, and may approve it under such terms and conditions as, in its judgment, the public convenience and necessity require.

(7) Notwithstanding any other provision in this act, the commission shall issue a certificate of public convenience and necessity to any air carrier actually operating in good faith and doing business as of January 1, 1967, without a hearing, if such carrier meets the conditions and requirements specified in this act, provided the application therefor shall have been filed with the commission on or before January 2, 1968. The commission may issue a temporary certificate of public convenience and necessity pending action on the application, and the air carrier may operate until its application is either granted or denied by the commission.

(8) Without the express approval of the commission, no certificate of public convenience and necessity issued to one air carrier under the provisions of this act shall be combined, united, or consolidated with another such certificate issued to or possessed by another such carrier, so as to permit through service between any point or points served by one carrier on the one hand, and any point or points served by another such carrier, on the other hand.

(9) Any one air carrier may, with written approval from the commission having been first obtained, and after notice to all interested parties and the public, and after hearing, establish through rates and joint rates, charges and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it.

(10) The commission may at any time suspend the certificate of any air carrier for failure to comply with the insurance regulations established pursuant to subsection 12 of this section. For any other good cause, the commission may at any time upon notice to the holder of any certificate an opportunity to be heard, suspend, revoke, alter or amend any such certificate.

(11) When a complaint has been filed with the commission alleging that any aircraft is being operated without a certificate of public convenience and necessity, as required by this act, or when the commission has reason to believe that this act is being violated, the commission shall investigate such operations and may, after a hearing, make its order

requiring the operator of the aircraft to cease and desist from any operation in violation of this act. The commission shall enforce compliance with such order under the powers vested in the commission by law, including, but not limited to, the provisions of chapters 1 through 8 of Title 1 of R.C.M. 1947.

(12) The commission may, upon its motion, or upon application of any interested party, and after hearing, require any air carrier to procure and maintain insurance in such amounts and upon such terms as the commission may determine.

(13) The commission shall have the power to suspend and enforce the suspension of certificates of public convenience and necessity, issued by the commission, upon a finding of any agency of the federal government that an air carrier is operating in violation of any federal safety law or regulation.

(14) No air carrier shall discontinue operations to any point without authority of the commission, unless such operations are unprofitable. Unprofitable operations may be discontinued upon thirty (30) days' notice to the commission, and to such other persons as the commission may require, unless within such thirty-day period the commission, after hearing, makes a finding that such operation is not unprofitable and orders its continuance.

(15) The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any air carrier is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such air carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business.

In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust, and that in refusing compliance therewith the air carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars (\$1000) for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and

remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

(16) Any air carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of the commission is applicable, against the said commission as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the commission under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the commission affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said commission shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

(17) Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

(18) Those aircraft operators who carry passengers for hire that are commonly known as taxi or charter operators who operate on an occasional or contract basis and do not operate as common carriers between terminal points, including intermediate points, if any, are excluded from the provisions of this act.

History: En. Sec. 2, Ch. 171, L. 1967.

1-324. **Publication of notice.** Notice as required by section 2 [1-323] of this act shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held.

History: En. Sec. 3, Ch. 171, L. 1967.

CHAPTER 5—MISCELLANEOUS

Section 1-501. Receipt and disbursement of moneys.

1-501. **Receipt and disbursement of moneys.** All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 1-203, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the following revenues to-wit: All gifts and all legislative appropriations to the commission; all moneys received

from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the commission.

There shall be deposited in the earmarked revenue fund to the credit of the commission the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the first two paragraphs for four former paragraphs, for text of which see parent volume.

Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the aviation fund as an expense of administration. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869.

1-502. Aeronautics functions governmental—no liability for torts.

Airport Manager as Agent of Municipality

Where city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

ern Airlines, Inc., 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. West-*

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

CHAPTER 6—UNIFORM STATE LAW FOR AERONAUTICS

Section 1-603. Lawfulness of flight—landings—recovery of damages.

1-603. (2736.7) Lawfulness of flight—landings—recovery of damages. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air com-

merce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft, as pilot thereof, either in the air or on the ground in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963.

Amendment

The 1963 amendment inserted "as pilot thereof, either in the air or on the ground" near the beginning of the second sentence of the first paragraph.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

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- 1-802. Land when deemed acquired for public use—exercise power of eminent domain.
- 1-803. Creation of board to govern airport—fees—fund for maintenance—rules and regulations.

1-801. (5668.35) Counties, cities and towns may acquire land for, and establish airports and landing fields. Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

In addition, a county, city or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns or any combination of such counties, cities or towns. Such airport need not be located within the limits of each subdivision participating in the joint venture, in whole or in part.

History: En. Sec. 1, Ch. 108, L. 1929; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961.

Amendment

The 1961 amendment added the second paragraph.

1-802. (5668.36) Land when deemed acquired for public use—exercise power of eminent domain. Any lands acquired, owned, controlled or occupied by any county, city or town, individually or pursuant to joint action

as herein provided for the purposes enumerated in section 1-801, shall and are hereby declared to be acquired, owned, controlled and occupied for a public use, and as a matter of public necessity, and such counties, cities and towns, whether acting individually or jointly shall have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

History: En. Sec. 2, Ch. 108, L. 1929; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961.

Amendment

The 1961 amendment after the words "county, city or town" inserted the words "individually or" and deleted the words "or by a county and city or cities, or town or towns."

1-803. (5668.37) Creation of board to govern airport—fees—fund for maintenance—rules and regulations. The county, city or town, acting individually or acting jointly as herein authorized by section 1-801, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same, and for that purpose may create a board or body from the inhabitants of such county, city or town, or such joint subdivisions of the state for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall be a charge against such county, city or town, or, when a county, city or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state, and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

For the purpose of meeting the charges hereinbefore mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council, or councils, affected.

All disbursements from such fund shall be made by order of such joint board or body, if one be created as hereinabove authorized, otherwise under such rules and regulations as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961.

Amendment

The 1961 amendment substituted the words "acting individually or" for "or the county and any city or cities, town or towns" near the beginning of the section;

inserted "by section 1-801" after "herein authorized" in the first sentence of the first paragraph; substituted "county, city or town" for "county and city or cities, town or towns" the second place that phrase appears in the third sentence of the first paragraph; and deleted "two (2)" before "governing bodies" at the end of the first paragraph.

1-812. Operation and use privileges.**Airport Manager as Agent**

Where in a lease of hangar facilities at a city and county airport, the parties named one of the lessees as airport manager, it was apparent that the parties had

this section in mind and the use of the word "manager" implied that he was to be the agent of the airport commission. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-821. Joint operations.**References**

Cited in *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-822. Public purpose, county and municipal purpose.**Immunity from Suit**

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 719.

2-104. (7931) Agency, actual or ostensible.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-106. (7933) Ostensible agency.

Acquiescence in Agency

Where a hotel company had acted as a ski lift company's agent in managing the latter's business, and where the hotel company's principal stockholder had later taken possession of and controlled the ski lift company's office and principal place of business for two years, the principal stockholder was the agent of the ski lift company in negotiating an employment contract, and this was further confirmed when the stockholder engaged counsel to defend the ski lift company in the instant litigation. *Hamilton v. Lion Head Ski Lift, Inc.*, 139 M 335, 363 P 2d 716,

719, explained in 146 M 432, 437, 408 P 2d 151.

Acts and Statements Establishing Agency

Where a husband signed a letter employing an attorney and where his wife conferred with the attorney several times and approved his actions with the husband's knowledge and without his expressed disapproval, and where the husband claimed the benefits of the attorney's actions, the wife was the ostensible agent of the husband. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

2-114. (7937) Creation of agency.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-118. (7941) Ratification of part of a transaction.

Operation and Effect

Where a landowner claimed the benefit of an attorney's action in clearing title by paying part of a tax claim as part of a settlement, the landowner ratified other

stipulations entered into by the attorney as a part of the same settlement and embodied in the same decree. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

2-122. (7945) Measure of agent's authority.

Conduct of Business

Employee of used car dealer who had been left on the sales lot with the authority to show, demonstrate, quote prices and make trade-in deals, was clothed with sufficient power to conduct the business,

in the absence of his employer, and was agent of the employer in dealing with the public and promoting sale of used cars on the sales lot of his employer. *White v. Sorenson*, 141 M 318, 377 P 2d 364, 366.

2-123. (7946) Actual authority defined.

References

Cited in *White v. Sorenson*, 141 M 318,
377 P 2d 364, 366.

2-124. (7447) Ostensible authority defined.**Permissive Use of Vehicle by Employee**

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible

authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

References

Cited in *White v. Sorenson*, 141 M 318, 377 P 2d 364, 366.

CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

2-205. (7961) For acts done under a mere ostensible authority.**Permissive Use of Vehicle by Employee**

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

Service of Process

The doctrine of ostensible agency has no application when it becomes involved with the question of whether service of process has been legally made on a "managing or general agent" within the meaning of Rule 4D(2)(e)(i). *Kraus v. Treasure Belt Min. Co.*, 146 M 432, 408 P 2d 151.

2-206. (7962) When exclusive credit is given to agent.**Mechanic's Lien**

Even assuming that a contractor making real estate improvements was acting as the agent of the property owner in purchasing material for the improvement, this section does not apply so as to re-

quire any notice from the materialman to the property owner, other than that required by the mechanic's lien law, to perfect a materialman's lien. *Monarch Lumber Co. v. Haggard*, 139 M 105, 360 P 2d 794.

2-212. (7968) Agent's responsibility to third persons.**Operation and Effect**

Where seller at auction sale required assurances from principal before it would accept the agent's drafts on principal in payment for cattle purchased, the seller could not hold the agent personally liable

on the contract even though it permitted the agent to bid in at the auction without disclosing his principal. *Yellowstone Livestock Comm. v. Dupuis*, 133 M 454, 325 P 2d 691.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

- Chapter 1. Department and commissioner of agriculture—creation and general powers, 3-103, 3-107, 3-110.1.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-201, 3-202, 3-205, 3-226 to 3-228, 3-233.
 4. Farm storage of grain as basis for farm credit—inspection and certification, 3-408, 3-420.
 5. Protein testing of grain, 3-510.
 6. Farm storage public warehousemen, 3-602.
 7. Bean warehousemen, 3-704.
 8. Agricultural seeds, 3-802, 3-816 to 3-819.
 9. Sealers of grain, 3-904.
 11. Horticulture—control of fruit pests and diseases, 3-1103.
 12. Nurseries and nurserymen—license and regulation, 3-1212.
 14. Standard grades and brands for Montana farm products, 3-1404.
 15. Miscellaneous powers and duties of department of agriculture, 3-1510 to 3-1515.
 17. Commercial fertilizer—regulation of sale, 3-1714 to 3-1717, 3-1723, 3-1724, 3-1727.
 18. Hay dealers—bond and license, Repealed—Section 1, Chapter 81, Laws of 1959.
 19. Mustard seed—grade requirements—purchaser's bond and license, 3-1906, 3-1910.
 20. Commercial feeds—regulation, 3-2012 to 3-2024.
 22. Poultry improvement, 3-2201 to 3-2205, 3-2207, 3-2209, 3-2211, 3-2212.
 23. Eggs and egg dealers—license, 3-2301, 3-2302, 3-2312, 3-2313, 3-2315.
 24. Dairies and dairy products—regulations of production and sale, 3-2407, 3-2410, 3-2411, 3-2417, 3-2466, 3-2476.
 25. Montana quality label—use on inspected agricultural and food products, 3-2503.
 27. Control of noxious rodent pests, 3-2704.
 28. Rural rehabilitation, 3-2803.
 29. Wheat research and marketing, 3-2901 to 3-2920.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

- Section 3-103. Salary, and office of commissioner.
- 3-107. Powers and duties of department.
- 3-110.1 Production of fur-bearing animals defined as agricultural pursuit.

3-103. (3557) Salary, and office of commissioner. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of agriculture. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921; re-en. Sec. 3557, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1953; amd. Sec. 1, Ch. 225, L. 1963; amd. Sec. 9, Ch. 177, L. 1965; amd. Sec. 1, Ch. 237, L. 1967.

Amendments

The 1963 amendment substituted the provision for a maximum salary of \$10,000 for a provision fixing the salary at \$7,000.

The 1965 amendment deleted from the

end of the first sentence a clause reading, "and shall give a surety company bond in the sum of seven thousand dollars (\$7,000.00), conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state."

The 1967 amendment substituted the second, third and fourth sentences for a sentence providing for a maximum salary of \$10,000; and made minor changes in phraseology and punctuation.

3-107. (3561) Powers and duties of department. The department of agriculture shall have power and it shall be its duty:

1 to 13. * * * [Subdivisions 1 to 13, same as parent volume.]

14. To contract in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "labor, and industry" in the name of the department and in subd. 14 after the word "contract" deleted the words "with the approval of the state board of examiners."

Repealing Clauses

Section 14 of Ch. 80, Laws 1961 read "Sections 82-1122, 82-1123, 82-1124, 82-1126, 82-1127, 82-1128, 82-1129, 82-1130, 82-1140, 82-1141, 82-1142, 82-1143, 82-1145, 82-1146, 82-1148, 59-702, 59-703, 59-704, 77-1003 and 82-2205, Revised Codes of Montana, 1947 are repealed."

Section 15 of Ch. 80, Laws 1961 repealed all acts or parts of acts in conflict therewith.

3-110.1. Production of fur-bearing animals defined as agricultural pursuit. (1) The following are agricultural pursuits:

(a) The breeding, raising and producing in captivity of all fur-bearing animals.

(b) The marketing by the producer of these animals as live animals or as pelts.

(2) Such animals or pelts are agricultural products and any person engaged in the producing or marketing of such products is a farmer engaged in an agricultural pursuit, as generally expressed in Title 3, R. C. M. 1947.

(3) This act is not intended to alter the powers or duties of the state fish and game commission with respect to fur-bearing animals under existing statutes.

History: En. Sec. 1, Ch. 25, L. 1965.

Title of Act

An act declaring the raising of fur-

bearing animals in captivity to be an agricultural pursuit without altering the powers or duties of the state fish and game commission under existing statutes.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section 3-201. Definitions.

3-202. Fees to be paid to state sealer of weights and measures.

3-205. Inspectors of grain—samplers and weighers—qualifications—interest.

3-226. Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.

3-227. Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.

- 3-228. Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.
 3-233. Fees—disposition.

3-201. (3574) Definitions. Whenever the word "grain" is mentioned in this act, it shall be construed to include flax. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment or handling. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling. The term "track buyer" shall mean and include every person, firm, association, and corporation who engages in the business of buying grain for shipment or milling, and who does not own, control, or operate a warehouse or public warehouse. The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; amd. Sec. 1, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted the words "truck, tractor-trailer unit, or" in the sentence defining "grain dealer."

3-202. (3575.2) Fees to be paid to state sealer of weights and measures. It shall be the duty of each person, firm, co-partnership, or corporation owning or in possession of a scale or scales to pay to the state sealer of weights and measures or his deputies at the time of each inspection of such scale or scales, the following inspection fees: For each railroad track scale the sum of fifteen (\$15.00) dollars; grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, twenty-five (\$25.00) dollars; automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars; wagon scale, truck scale, coal scale, dump scale, beet scale, and stock scale, up to and including ten (10) ton capacity, ten (\$10.00) dollars, over ten (10) ton up to and including twenty (20) ton capacity, twelve (\$12.00) dollars, two-section scale with a capacity over twenty (20) ton, twenty (\$20.00) dollars; three (3) or more section twenty (20) ton and over capacity, twenty-five (\$25.00) dollars; for each dormant platform scale up to thirty-five hundred (3500) pounds, meat track scale and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two (\$2.00) dollars; built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five (\$5.00) dollars each portable scale, hanging scale and commercial person weighing scale, two (\$2.00) dollars; grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty (50¢) cents; all counter scales

with a capacity of one (1) to ten (10) pounds, fifty (50¢) cents; all counter scales with a capacity of over ten (10) pounds, one dollar and twenty-five cents (\$1.25).

Where fees are not paid within thirty (30) days after inspection, there shall be an added charge of fifty per cent (50%) of the inspection fee and the equipment will be sealed and removed from service by the sealer of weights and measures or his deputies, until such fees have been paid.

Anyone found using a weighing device or petroleum measuring device or removing the said seal before all inspection fees have been paid, shall upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices and for special services not covered by the foregoing schedule of fees.

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933; amd. Sec. 2, Ch. 146, L. 1939; amd. Sec. 1, Ch. 109, L. 1945; amd. Sec. 1, Ch. 163, L. 1947; amd. Sec. 1, Ch. 89, L. 1953; amd. Sec. 1, Ch. 85, L. 1957; amd. Sec. 1, Ch. 145, L. 1961.

shipping scale,"; and increased the fee for wagon scales etc. of up to ten tons capacity from \$8.00 to \$10.00.

Repealing Clause

Section 2 of Ch. 145, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 145, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 3, 1961.

Amendment

The 1961 amendment inserted the clause "automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars" in the first paragraph; after the words "coal scale, dump scale," deleted the words "automatic or hopper

3-203. (3575.3) Repealed.

Repeal

This section (Sec. 3, Ch. 124, L. 1927; Sec. 3, Ch. 146, L. 1939), relating to the

expenses of the state sealer of weights and measures and his deputies, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-205. (3576) Inspectors of grain—samplers and weighers—qualifications—interest. The commissioner of agriculture shall appoint a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. At all inspection points designated by the commissioner he shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the chief inspector; provided, however, that grain held in transit for inspection and diversion only, need not be weighed. Such chief inspector and inspectors shall be able to qualify under the terms and in accordance with the United States Federal Grain Standards Act. No chief inspector, inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Ch. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a fourth sentence reading, "The chief inspector, inspectors and weighers shall each give

bond, to be approved by the commissioner, to the state in the sum of five thousand dollars (\$5,000.00) conditioned for faithful discharge of his duties."

3-226. (3588.2) Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee. [Effective January 1, 1965.]

History: En. Sec. 3588-B by Sec. 4, Ch. 41, L. 1923; amd. Sec. 11-101, Ch. 264, L. 1963.

end of the section a clause reading, "and in such event grain on hand in any particular warehouse or elevator shall first be applied to the redemption and satisfaction of receipts issued by such warehouse."

Amendment

The 1963 amendment deleted from the

3-227. (3589) Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report. On June 30th of each year every warehouseman, track buyer and grain dealer shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from or by such warehouseman, track buyer and licensed grain dealer under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman, grain dealer or track buyer at such times as the commissioner may deem expedient. The commissioner may cause the business of every warehouseman, track buyer and grain dealer and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman, track buyer and grain dealer shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse or resist inspection as provided in this section, shall be guilty of a misdemeanor and be punished by a fine of not less than three hundred dollars (\$300.00), nor more than five hundred dollars (\$500.00).

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted "track buyer and grain dealer" after "warehouseman" near the beginning of the first sentence and near the end of the third sen-

tence; inserted "or by" after "received and shipped from" in the first sentence; substituted "such warehouseman, track buyer and licensed grain dealer" for "such warehouse licensed" in the latter part of the first sentence; inserted "grain dealer or track buyer" after "warehouseman" in the

second sentence; substituted "the business of every warehouseman, track buyer and grain dealer" for "every warehouse and business thereof" in the first part of the third sentence; and increased the minimum fine specified at the end of the section from \$50 to \$300.

3-228. (3589) Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license. Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July each year, give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by section 3-229, Revised Codes of Montana, 1947. Provided, however, that where a truck, tractor-trailer owner or operator purchasing grain in Montana for the first time for cash or by certified check, the bond provided for in this act shall not be required.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where or in which grain is received, stored and or shipped, and upon the payment of such fee of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units designated within the state of Montana, for a period of one (1) year save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain for use on his own lot. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars (\$300.00) nor more than five hundred

dollars (\$500.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959; amd. Sec. 3, Ch. 224, L. 1961; amd. Sec. 1, Ch. 27, L. 1963.

Amendments

The 1959 amendment added the last paragraph to this section.

The 1961 amendment substituted "grain dealer" for "dealer" in the first paragraph and in the first sentence of the second paragraph; substituted the reference to section 3-229 near the end of the first paragraph for "the law"; added the proviso at the end of the first paragraph; inserted "truck, tractor-trailer unit" after "elevator" in two places in the first sentence of the second paragraph; inserted "or in which" after "where" in two places in the first sentence of the second paragraph; inserted "or" between "stored and" and "shipped" in the first sentence of the second paragraph; inserted "or with the licensed units" after "place" in the latter part of the first sentence of the second paragraph; added to the first sentence of the second paragraph the clauses reading, "save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain"; inserted the second sentence of the second paragraph; deleted from the present third sentence of the second paragraph a parenthetical clause

which followed "revoked" and read "save only that a public warehouseman shall be permitted to deliver grain previously stored with him"; and changed the fine provided for in the last sentence of the second paragraph by increasing the minimum from \$25 to \$300 and the maximum from \$100 to \$500.

The 1963 amendment substituted "executed by a corporate surety authorized to do business in the state of Montana" for "with good and sufficient sureties to be approved by the commissioner of agriculture" after "give a bond" in the first paragraph.

Separability Clause

Section 4 of Ch. 224, Laws 1961 read "If any section, sub-section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 2 of Ch. 145, Laws 1959 repealed all acts and parts of acts in conflict therewith.

References

Cited in *Kohles v. St. Paul Fire & Marine Ins. Co.*, 144 M 395, 396 P 2d 724, 726; *State ex rel. Farmers Elevator Co. of Reserve v. District Court*, — M —, 410 P 2d 160.

3-229. (3589.1) Protection of holders of warehouse receipts, etc.

Independent Action

This section does not preclude an aggrieved party from bringing its own action independently. On the contrary, such right is expressly provided for by section

6-313, which is made applicable to actions on surety bonds by section 6-331. *State ex rel. Farmers Elevator Co. of Reserve v. District Court*, — M —, 410 P 2d 160.

3-233. Fees—disposition. All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to

pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall be used by the commissioner in carrying out such services, except moneys presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "in a fund to be known as 'The Department of Agriculture Grain Services' Revolving Fund'" at the end of the third sentence; substituted "Fees deposited in the earmarked

revenue fund may be used" for "The state auditor is authorized to draw warrants upon such fund" at the beginning of the fourth sentence; substituted "as provided by law" for "by the state board of examiners" at the end of the fourth sentence; and deleted the former fifth sentence requiring the commissioner to submit a budget to the legislature.

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT —INSPECTION AND CERTIFICATION

Section 3-408. Fees for inspectors.

3-420. Expenses for administration of act—how paid—fees for inspection.

3-407. (3592.17) Repealed.

Repeal

This section (Sec. 8, Ch. 27, L. 1929),

relating to the bonds of inspectors, was repealed by Sec. 51, Ch. 177, Laws 1965.

3-408. (3592.18) Fees for inspectors. The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected.

History: En. Sec. 9, Ch. 27, L. 1929; amd. Sec. 28, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a pro-

vision at the end of the second sentence reading: "and shall be paid monthly by the commissioner by warrants drawn upon the fund created by the provisions of this act."

3-420. (3592.30) Expenses for administration of act—how paid—fees for inspection. The expense of the administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 21, Ch. 27, L. 1929; amd. Sec. 5, Ch. 96, L. 1931; amd. Sec. 29, Ch. 147, L. 1963.

Amendment

The 1963 amendment, at the end of the last sentence, substituted "in the ear-

marked revenue fund" for the following: "and the fund shall be known as the department of agriculture revolving appropriation fund for grain grading, and upon such fund the state auditor shall draw warrants to pay the general expenses of this act."

CHAPTER 5—PROTEIN TESTING OF GRAIN

Section 3-510. Fees for protein tests—disposal of proceeds.

3-510. (3592.40) Fees for protein tests—disposal of proceeds. The commissioner of agriculture shall fix the fees for testing grain for protein

content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 10, Ch. 111, L. 1931; amd. Sec. 30, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund known as the department of agri-

culture revolving appropriation for grain grading, out of which all operating expenses of this act are to be paid" at the end of the first sentence; and deleted a second sentence providing for the disposition of surplus accumulated from fees.

CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

Section 3-602. Farm storage public warehouseman defined—license—fee—disposal.

3-602. (3592.45) Farm storage public warehouseman defined—license—fee—disposal. All persons, firms, corporations or associations, now or hereafter engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May 31st of each year. The license fee, which must accompany the application is hereby fixed at five dollars (\$5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the general fund.

History: En. Sec. 2, Ch. 174, L. 1931; amd. Sec. 31, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "gen-

eral fund" for "department of agriculture, labor, and industry revolving fund for grain grading" at the end of the section.

CHAPTER 7—BEAN WAREHOUSEMEN

Section 3-704. License required of persons warehousing beans—fee—disposal of moneys—expiration date.

3-704. (3592.57) License required of persons warehousing beans—fee—disposal of moneys—expiration date. All persons engaged in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of agriculture of Montana in the sum of fifteen dollars (\$15.00), which shall be deposited with the treasurer of the state of Montana and credited to the general fund. Said licenses shall be renewed annually and the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June 30th next following.

History: En. Sec. 4, Ch. 164, L. 1935; amd. Sec. 32, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the general fund" at the end of the first sen-

tence for "the special fund known as the 'revolving fund of the division of horticulture' to be expended by the chief of the said division upon approval of the treasurer of the state of Montana, and all

moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act."

CHAPTER 8—AGRICULTURAL SEEDS

Section 3-802. Labeling of agricultural seed.

3-816. Vegetable or flower seeds—labeling required.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement.

3-818. Prohibitions.

3-819. Penalty.

3-802. (3594) Labeling of agricultural seed. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1 to 9. * * * [Same as parent volume.]

10. Prohibition of sales of certain seeds. It shall be unlawful for any person, firm, co-partnership, corporation or association to sell, or to offer for sale, or to expose or display for sale, any agricultural seed within the state of Montana, irrespective of the place of origin of such seed, which contains noxious weed seeds of any one, or more, of said groups of noxious weed seeds as follows:

(1) to (5). * * * [Same as parent volume.]

(6) In mixtures represented by printed labeling, by pictorial illustrations, or in any manner whatsoever, to be for lawn seeding purposes, unless they contain at least fifty per cent (50%) pure seed of perennial fine-leaved species which shall be specified by rules and regulations pursuant to this act. Provided, however, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaved grasses may be sold. Provided further that when in packages of twenty-five (25) pounds or less, they shall carry the statements "Not recommended for a fine-leaved perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable."

A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa Compressa*);

(b) Chewings Red Fescue and all improved varieties;

(c) Creeping Red Fescue and all improved varieties;

(d) Bentgrass—all varieties.

11. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929; amd. Sec. 1, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 2, Ch. 155, L. 1951; amd. Sec. 1, Ch. 168, L. 1961.

Amendment

The 1961 amendment added a new clause (6) to subd. 10.

3-816. Vegetable or flower seeds—labeling required. Any individual, firm, partnership, association, corporation or other group selling, offering to sell, or possessing for sale at wholesale or retail vegetable or flower seeds, within the state of Montana must, whether in package or in bulk, affix thereto in a conspicuous place on the exterior of the container of such seeds, a written or printed label or tag in the English language in legible type, script or copy, such label containing a statement specifying:

Each container of less than one pound:

1. Kind and variety of seed.
2. With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.
3. With the name and number per pound of each kind of restricted noxious weed seed.
4. In the case of vegetable seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act of 1960 with subsequent revisions:
 - (a) The percentage of germination.
 - (b) The percentage of hard seed, if more than one per cent.
 - (c) The month and year the test was made.
 - (d) The words, "below standard germination," in not less than eight point bold face type.

5. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Each container of one pound or more:

1. Kind and variety of seed.
2. The lot number or other lot identification.
3. The name and number per pound of each kind of restricted noxious weed seed.
4. The percentage of germination.
5. The percentage of hard seed, if more than one per cent.
6. The month and year the test was made.
7. The name and address of the person who labeled such seed or who sells, offers or exposes such seed for sale within this state.
8. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Vegetable or flower seed containing weed seeds in the "Restricted List" may be sold in the state of Montana if weed seeds present are not in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed. Vegetable or flower seed containing weed seeds not in either the prohibited or restricted lists may be sold in the state of Montana if total weed seeds present are not in excess of two per cent (2%) by weight of vegetable or flower seed. The name or names of all restricted weed seed species present, and the number thereof, singly or collectively, per pound of vegetable or flower seed, shall appear on the label or tag.

Prohibited List

Canada Thistle
 (Cirsium arvense)
 (Carduus arvensis)
 Leafy spurge
 (Euphorbia esula)
 White Top
 (Lepidium Cardaris
 draba)
 Perennial peppergrass
 (Cararia repens)
 Hoary cress
 (Hymenophysa (Cardaria)
 pubescens)

Quackgrass

(Agropyron repens)
 Russian knapweed
 (Centaurea picris)
 (Centaurea repens)
 Perennial Sow Thistle
 (Sonchus arvensis)
 Wild Morning Glory (Field
 Bindweed) (Convolvulus
 arvensis)
 Toadflax
 (Linaria dalmatica)
 Creeping bellflower
 (Campanula
 rapunculoides)

Restricted List

Dodder
 (Cuscuta spp.)
 Blue Flowering Lettuce
 (Lactuca pulchella)
 St. Johnswort (Klamath-
 weed)
 (Hypericum perforatum)
 Wild Onion (Wild Garlic)
 (Allium vineale)
 Ox-eye Daisy
 (Chrysanthemum
 leucanthemum)
 Halogeton
 (Halogeton glomeratus)
 Medusa-head wildrye
 (Elymus Caput-Medusea)

Spotted knapweed
 (Centaurea maculosa)
 Hoary false alyssum
 (Berteroa incanna)
 Common toadflax
 (Linaria vulgaris)
 Wild Oats
 (Avena fatua)
 Curled Dock
 (Rumex crispus)
 Chickweed
 (Stellaria spp.)
 Plantain
 (Plantago spp.)
 Dandelion
 (Taraxacum officinale)
 Crabgrass
 (Digitaria ischaemum)

9. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said vegetable or flower seed for sale.

History: En. Sec. 1, Ch. 196, L. 1961.

Title of Act

An act to provide that vegetable or flower seeds to be offered for sale at wholesale or retail in the state of Montana to be properly tagged and dated to apprise the purchaser of certain informa-

tion relative to the contents of the seed, weed, content, and germination; to prescribe duties of the commissioner of agriculture and the director of the Montana grain inspection laboratory and to provide for penalties for non-compliance with this act.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of

and test vegetable or flower seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of vegetable or flower seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 2, Ch. 196, L. 1961.

3-818. Prohibitions. (a) It shall be unlawful to sell, offer or expose for sale any vegetable or flower seed within this state:

1. Not labeled as required herein, or having a false or misleading label;
2. Seed to which there has been false or misleading advertisement;
3. Unless the test to determine the percentage germination shall have been completed within nine months, exclusive of the calendar month in which the test was completed prior to the sale, offering for sale, or exposure for sale;
4. Containing weed seeds in the prohibited list;
5. Containing weed seeds in the restricted list in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed;
6. Containing a total of all weed seeds in excess of two per cent (2%) of the whole by weight;

(b) It shall be unlawful for any individual, firm, partnership, association, or corporation within this state:

1. To detach, alter, deface, or destroy any label provided for in this act or the rules and regulations made and promulgated hereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this act;
2. To disseminate any false or misleading advertisement concerning vegetable or flower seeds in any manner or by any means;
3. To hinder or obstruct in any way any authorized person in the performance of his duties, under this act;
4. To fail to comply with a "stop sale" order.

History: En. Sec. 3, Ch. 196, L. 1961.

3-819. Penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any flower or vegetable seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty (\$50.00) nor more than five hundred dollars (\$500.00) and costs of such prosecution.

History: En. Sec. 4, Ch. 196, L. 1961.

CHAPTER 9—SEALERS OF GRAIN

Section 3-904. Filing fee of commissioner—use of funds.

3-904. (3602.4) Filing fee of commissioner—use of funds. The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 111, L. 1933; amd. Sec. 33, Ch. 147, L. 1963.

Amendment

The 1963 amendment, at the end of the section, substituted "deposited in the state

treasury to the credit of the general fund" for "used for the purpose of providing blank certificates and seals for the use of the sealers and other expenses in the administration of this act."

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

Section 3-1103. Destruction of fruit pests—use of crates.

3-1103. (3610) Destruction of fruit pests—use of crates. For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be

posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921;
re-en. Sec. 3610, R. C. M. 1921; amd. Sec.
1, Ch. 29, L. 1963.

Amendment

The 1963 amendment deleted the words "fruit or" which followed "wrapping once having contained" in the first part of the second sentence in the first paragraph.

**CHAPTER 12—NURSERIES AND NURSERYMEN—
LICENSE AND REGULATION**

Section 3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined.

3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fees, as in this act required, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge, upon request of the licensee. No license shall be issued to a seasonal nurseryman unless the applicant shall have made application for such license at least thirty (30) days in advance of doing business within the state of Montana each year. A seasonal nurseryman is any person, firm, corporation, or other, engaged in the business of selling, dealing in, or importing into the state of Montana, for sale or distribution, any nursery stock which is for sale only during certain growing seasons

and whose place of business is open only during certain growing seasons and not continuously throughout the year.

All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses must bear the date of issue and shall expire the first day of July next following the date of issue. The license fee shall be fifteen dollars (\$15.00) per annum for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10.00) per annum for a nursery dealing in small fruits, ornamental shrubs, bulbs and perennials; five dollars (\$5.00) for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15.00) for seasonal nurserymen.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963.

and fourth sentences to the first paragraph and the words "and fifteen dollars (\$15.00) for seasonal nurserymen" at the end of the second paragraph.

Amendment

The 1963 amendment added the third

CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section 3-1404. Grading and branding of products required—labeling of culls.

3-1404. (3633.4) Grading and branding of products required—labeling of culls. (a) to (d). * * * [Same as parent volume.]

(e) Provided further that U. S. commercial grade shall be a standard grade in the state of Montana.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963.

"not" which appeared between "shall" and "be" in subsection (e); and deleted former subsection (f), for text of which see parent volume.

Amendment

The 1963 amendment deleted the word

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section 3-1510. Intrastate transactions with paints, etc.—label—contents of label.

3-1511. Penalty for violations.

3-1512. Possession as prima facie evidence.

3-1513. Enforcement of act.

3-1514. Designation of laboratory for analysis—report of analysis.

3-1515. County attorney—duties regarding act.

3-1510. Intrastate transactions with paints, etc.—label—contents of label. Every person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes and polishes,

shall label the same in a clear and distinct manner. Such label shall recite a full analysis of the content with a specification of pigment and vehicle. An analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition shall be subject to inspection by the chief chemist of a laboratory designated by the department of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 69, L. 1959.

Title of Act

An act requiring the labeling of all containers of paints, varnishes, roof coatings and other protective and decorative materials offered for sale, sold, or shipped

in intrastate transactions within the state; providing for the inspection and analysis of paints, varnishes, roof coatings and other protective and decorative materials by a chief chemist designated by the department of agriculture; providing for penalties for violation of this act.

3-1511. Penalty for violations. Any person, firm, or corporation who fails to comply with all of the provisions of this act shall be subject to prosecution and upon conviction, to a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars and all costs, including cost of analysis to the amount of twenty-five (\$25.00) dollars or by imprisonment in a county jail not to exceed sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959.

3-1512. Possession as prima facie evidence. The possession, either constructive or actual by any person, firm, or corporation dealing in said articles or substances hereinabove described and not properly labeled as provided by section 1 [3-1510] of this act, shall be considered prima facie evidence that the same is kept for sale in violation of the provisions of this act and punishable under it.

History: En. Sec. 3, Ch. 69, L. 1959.

3-1513. Enforcement of act. The department of agriculture of the state of Montana shall be responsible for the enforcement of this act and shall appoint any assistants or agents deemed necessary for the proper enforcement of all the provisions of this act. These appointed agents or assistants shall be duly authorized for the purpose, and shall have access to all places of business, factories, stores and buildings used for the manufacture or sale of paints or other products described in section 1 [3-1510] of this act. They shall have the power and authority to purchase and open any package, can, jar, tub or other receptacle containing any of the articles recited in section 1 [3-1510] of this act.

History: En. Sec. 4, Ch. 69, L. 1959.

3-1514. Designation of laboratory for analysis—report of analysis. The department of agriculture of the state of Montana shall designate the laboratory where analysis of the products recited in section 1 [3-1510] of this act shall be made. When analysis of the products mentioned in section 1 [3-1510] of this act are found to be in violation of this act, the chief chemist of the laboratory appointed and designated by the department of agriculture shall report the facts of his tests to the department of agriculture. Every certificate duly signed and acknowledged by the chief

chemist of the laboratory relating to the analysis of any of the products mentioned in section 1 [3-1510] of this act shall be presumptive evidence of the facts therein stated.

History: En. Sec. 5, Ch. 69, L. 1959.

3-1515. County attorney—duties regarding act. It shall be the duty of the county attorney of the county of the state of Montana wherein the violation of this act occurred, to prosecute every person, firm, or corporation violating any of the provisions of this act when the evidence thereof has been presented by the chief chemist of the laboratory making the analysis as provided for in this act.

History: En. Sec. 6, Ch. 69, L. 1959.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

- Section 3-1714. Definition of terms.
 3-1715. Registration and licenses.
 3-1716. Labeling.
 3-1717. Inspection fees.
 3-1723. Rules and regulations and hearings.
 3-1724. Cancellation of registration.
 3-1727. Violations—enforcement proceedings—judicial review.

3-1701 to 3-1711. (4208.1 to 4208.11) Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 153, L. 1931; Secs. 1 to 7, Ch. 67, L. 1935; Secs. 1 to 5, Ch. 183, L. 1939; Secs. 1, 2, Ch. 72, L. 1947; Sec. 1, Ch. 129, L. 1951;

Sec. 1, Ch. 33, L. 1959; Sec. 34, Ch. 147, L. 1963), relating to standards for and analysis of commercial fertilizer, were repealed by Sec. 3, Ch. 55, Laws 1965.

3-1714. Definition of terms. (a) The term "fertilizer materials" means any substance containing nitrogen phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(b) to (e). * * * [Same as parent volume.]

(f) Guaranteed analysis:

(1) Until July 1, 1964, and thereafter until the commissioner prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of subparagraph (2) hereof. The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

- a. Total Nitrogen (N) _____ per cent
 Available Phosphoric Acid (P_2O_5) _____ per cent
 Soluble Potash (K_2O) _____ per cent

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

c. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides,

salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718 (b) of this act.

d. Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred pounds per ton may be shown.

(2) At any time after July 1, 1964, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)	_____	per cent
Available Phosphorus (P)	_____	per cent
Soluble Potassium (K)	_____	per cent

provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof, and provided, further, that for a period of two (2) years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(g) The term, "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis."

(h) to (o). * * * [Same as parent volume.]

(p) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.

(q) A "soil amendment" is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the federal insecticide, fungicide or rodenticide act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.

History: En. Sec. 3, Ch. 41, L. 1957; amd. Sec. 1, Ch. 43, L. 1963.

Amendment

The 1963 amendment substituted "phosphorus" for "phosphoric acid" and "potassium" for "potash" in subsection (a); inserted in subparagraph (f) (1) the matter preceding the first period therein; inserted the designation for subparagraph (f) (1) a; deleted from the beginning of former subparagraph (f) (2) a clause reading, "The term 'guaranteed analysis'

in the form specified in subparagraph (1) includes:"; redesignated former subparagraphs (f) (2) (i) and (f) (2) (iii), respectively, as (f) (1) b and (f) (1) d; substituted a new subparagraph (f) (1) c for a former subparagraph (f) (2) (ii) reading, "When permitted by the commissioner, additional plant nutrients expressed as the elements"; inserted a new paragraph (f) (2); inserted the words "phosphorus or" and "soluble potassium or" in paragraph (g); and added new paragraphs (p) and (q).

3-1715. Registration and licenses. (a) Each brand and grade of commercial fertilizer and each "soil amendment" shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-five dollars (\$35) per brand and ten dollars (\$10) per grade for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer. The registration fee shall be five dollars (\$5) for each soil amendment making no guarantees for plant nutrients or claims for fertilizer value. All fees collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (1) The brand and grade.
- (2) The guaranteed analysis.
- (3) The sources from which the nitrogen, phosphorus and potassium are derived.
- (4) The commissioner may require a manufacturer of commercial fertilizer or soil amendment to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.
- (5) The name and address of the registrant.
- (b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.
- (c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.
- (d) Any distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with part (a) of this section, must first make application to obtain a license from the commissioner. The application for such a license shall be submitted in duplicate to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as herein prescribed which sum shall constitute the license fee in event the license is granted. If said distributor blends or mixes fertilizer materials at more than one

fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical unit. The licenses shall be twenty-five dollars (\$25) in the case of each location but in the case of mobile units each such unit owned and operated by any one distributor shall be licensed at a rate of twenty-five dollars (\$25) for the first unit, and ten dollars (\$10) for each such additional mobile unit. The license shall expire on December 31 of each year.

Fees so collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Each licensee shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the commissioner not later than 30 days (which may be extended on valid reason therefor an additional thirty days, on written requests to the commissioner) after the close of each semiannual period. In lieu of the guaranteed analysis, the licensee must furnish to each and every purchaser and consumer in written or printed form, an invoice or delivery ticket showing the net weight and guaranteed analysis of each and every one of the materials used, which shall accompany delivery.

The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

The commissioner is authorized and empowered to cancel the license as herein provided upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given a hearing by the commissioner pursuant to section 3-1723 of this act.

History: En. Sec. 4, Ch. 41, L. 1957; amd. Sec. 2, Ch. 43, L. 1963; amd. Sec. 35, Ch. 147, L. 1963; amd. Sec. 1, Ch. 55, L. 1965.

Compiler's Note

This section was amended twice in 1963—by Chapter 43 and by Chapter 147. Neither amendatory act mentioned nor incorporated the amendments made by the other. Since the two amendments do not appear to conflict, the compiler has made a combined section, incorporating both amendments.

Amendments

Chapter 43, Laws 1963, inserted "and each 'soil amendment'" near the beginning of subsection (a); substituted "phosphorus and potassium" for "phosphoric acid and potash" in clause (a) (3); added a clause (a) (6) reading, "For soil amendments, in addition to the information required in paragraphs (1), (2), (3), (4),

and (5) of this section, applications for registration must include the name and chemical designation and content of active ingredients"; and completely rewrote subsection (d), for original text of which see parent volume.

Chapter 147, Laws 1963, added "which shall be deposited in the state treasury to the credit of the general fund" at the end of the second sentence of subsection (a); and deleted the former third sentence of subsection (a), reading: "Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act."

The 1965 amendment added the words "for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer" now appearing at the end of the second sentence of subsection (a); inserted the third sentence of subsection (a); substituted the fourth sentence of subsection (a) for the

clause added to the second sentence of subsection (a) by Chapter 43, Laws 1963; inserted "or soil amendment" after "commercial fertilizer" in paragraph (a) (4); deleted paragraph (a) (6) as added by Chapter 43, Laws 1963; substituted "shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of admin-

istering this act" in the first sentence of the second paragraph of subsection (d) for "shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act"; and made another minor correction in the second paragraph of subsection (d).

3-1716. Labeling. (a) and (b). * * * [Same as parent volume.]

(c) Soil amendments shall be labeled in accordance with paragraph (a) of this section or if distributed in bulk, paragraph (b), and in addition shall show the name or chemical designation and content of the active ingredients.

History: En. Sec. 5, Ch. 41, L. 1957;
amd. Sec. 3, Ch. 43, L. 1963.

Amendment

The 1963 amendment added subsection (c).

3-1717. Inspection fees. (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. All fees collected under this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six-months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars (\$10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957;
amd. Sec. 36, Ch. 147, L. 1963; amd. Sec.
6, Ch. 248, L. 1965.

Amendments

The 1963 amendment substituted "be deposited in the state treasury to the

credit of the general fund" for "constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act" in the second sentence of subd. (a).

The 1965 amendment substituted "All

fees collected under this section" for "Fees so collected" at the beginning of the second sentence of subsection (a); and substituted "earmarked revenue fund and shall be used for the expenses of administering this act" for "general fund" at the end of the second sentence of subsection (a).

3-1719. Repealed.

Repeal

This section (Sec. 8, Ch. 41, L. 1957), relating to minimum chemical content of

plant food, was repealed by Sec. 4, Ch. 43, Laws 1963.

3-1723. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing: (1) having notified by mail all registrants on file and (2) having advertised once a week for two consecutive weeks in two newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 12, Ch. 41, L. 1957; amd. Sec. 5, Ch. 43, L. 1963.

previous text of the section as subsection (a); substituted clauses (1) and (2) in subsection (a) for "following due public notice"; and added subsection (b).

Amendment

The 1963 amendment designated the

3-1724. Cancellation of registration. The commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner, as provided in section 3-1723 of this act.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963.

Amendment

The 1963 amendment added "as provided in section 3-1723 of this act" at the end of the section.

Separability Clause

Section 7 of Ch. 43, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the

remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 8 of Ch. 43, Laws 1963 repealed

all laws and parts of laws in conflict or inconsistent therewith.

Effective Date

Section 9 of Ch. 43, Laws 1963, provided for an effective date of July 1, 1963.

3-1727. Violations — enforcement proceedings — judicial review. (a)

* * * [Same as parent volume.]

(b) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) or more than five hundred dollars (\$500) for the first violation, and not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(c), (d) and (e). * * * [Same as parent volume.]

(f) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965.

ished in the discretion of the court"; and added subsection (f).

Amendment

The 1965 amendment substituted a new subsection (b) for a paragraph reading, "Any person convicted of violating any provision of this act or the rules and regulations issued thereunder shall be pun-

Repealing Clause

Section 3 of Ch. 55, Laws 1965 read "Sections 3-1701, 3-1702, 3-1703, 3-1704, 3-1705, 3-1706, 3-1707, 3-1708, 3-1709, 3-1710 and 3-1711, R. C. M. 1947, are hereby repealed."

CHAPTER 18—HAY DEALERS—BOND AND LICENSE

(Repealed—Section 1, Chapter 81, Laws of 1959)

3-1801 to 3-1807. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 204, L. 1937), relating to the licensing of hay

dealers, were repealed by Sec. 1, Ch. 81, Laws 1959, effective March 2, 1959.

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section 3-1906. Administration.

3-1910. Disposal of funds.

3-1906. Administration. It is hereby made the duty of the commissioner of agriculture of the state of Montana to administer and enforce this act, and for such purpose he is hereby empowered to make all proper necessary rules and regulations, and he is also empowered to and he shall fix the fees for inspection and weighing of mustard seed and such fees shall be a lien upon such mustard seed until paid, and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund. All operating expenses of this act shall be paid from such fees.

History: En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963.

Amendment

The 1963 amendment corrected the title of the commissioner of agriculture; substituted "the earmarked revenue fund"

for "a fund known as the 'department of agriculture revolving appropriation fund,' for grain grading, out of which all operating expenses of this act shall be paid" at the end of the first sentence; and added the second sentence.

3-1908. License and bond for persons contracting for purchase, etc.

Construction of Bond

In construing a mustard seed contractor bond, it is necessary to consider this section as part of the bond itself. *Kohles v. St. Paul Fire & Marine Ins. Co.*, 144 M 395, 396 P 2d 724, 726.

Purpose

The purpose of this section is to benefit those farmers who have sold their crops "in advance of harvest." *Kohles v. St. Paul Fire & Marine Ins. Co.*, 144 M 395, 396 P 2d 724, 726.

Recovery on Bond

Plaintiff who sold and delivered mustard seed to company which went bankrupt could not recover on a mustard seed contractor bond where he had the seed on hand and in storage when he contracted for sale. The seed was not planted or harvested in such year nor was it a growing crop during that year. *Kohles v. St. Paul Fire & Marine Ins. Co.*, 144 M 395, 396 P 2d 724, 726.

3-1910. Disposal of funds. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the general fund.

History: En. Sec. 3, Ch. 64, L. 1939; amd. Sec. 38, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "gen-

eral fund" for "revolving fund of the grain division of the department of agriculture, labor and industry."

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

- Section 3-2012. Enforcing official.
 3-2013. Definitions of words and terms.
 3-2014. Registration.
 3-2015. Labeling.
 3-2016. Inspection fees.
 3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds.
 3-2018. Adulteration.
 3-2019. Misbranding.
 3-2020. Inspection, sampling and analysis.
 3-2021. Rules and regulations and hearings.
 3-2022. Detained commercial feeds.
 3-2023. Penalties.
 3-2024. Publications.

3-2001 to 3-2011. Repealed.**Repeal**

These sections (Secs. 1 to 10, Ch. 228, L. 1943; Sec. 1, Ch. 42, L. 1951; Secs. 1 to 3, Ch. 127, L. 1951; Sec. 1, Ch. 82, L. 1959; Sec. 1, Ch. 166, L. 1959), relating to regulation of commercial feeds, were re-

pealed by Sec. 15, Ch. 127, Laws 1963, effective January 1, 1964. Sections 39 and 40, Ch. 147, Laws 1963, purported to amend sections 3-2004 and 3-2007; however, under the rule of section 43-515, these amendments were void.

3-2012. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 1, Ch. 127, L. 1963.

Title of Act

An act to provide registration of commercial feeds; defining commercial feed and other terms; to provide for labeling commercial feeds; to provide for inspection and sampling of commercial feeds and fees therefore; to provide prohibition against distribution of non-registered, adulterated, or misbranded feeds; to provide for the administration of this act by the commissioner of agriculture and empowering him to make rules and regula-

tions necessary to administration of this act; to provide power in the commissioner to detain, condemn and confiscate feeds being distributed in violation of this act or regulations made thereunder; to provide penalties for violations of this act or regulations; and to take effect and be in force from and after the first day of January, 1964; providing for a severability clause; and repealing sections 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, R. C. M. 1947.

3-2013. Definitions of words and terms. When used in this act:

(a) The term "person" includes individual, partnership, association, firm and corporation.

(b) The term "distribute" means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term "distributor" means any person who distributes.

(c) The term "sell" or "sale" includes exchange.

(d) The term "commercial feed" includes customer-formula feeds as this term is used in this act and means any material whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials, or elements, or parts thereof intended for use or used as an ingredient or component of a mixture of materials, used as a feed for animals other than man except:

(1) The mixed or unmixed whole seeds or meals made directly from and consisting of the entire seeds of corn, wheat, rye, barley, oats, buckwheat, flaxseeds, kaffir, milo and other grain seeds in combination or without molasses and containing no other ingredients.

(2) Unground hay.

(3) Whole or ground straw, stover, silage, cobs, husks, hulls, and wet beet pulp when not mixed with other materials and/or not pelleted.

(4) Individual chemical compounds when not mixed with other materials.

(5) Feeds used solely for household pets.

(6) Materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(e) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(f) The term "customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(g) The term "brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(h) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed or customer-formula feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

(i) The term "ton" means a net weight of two thousand pounds avoirdupois.

(j) The terms "per cent" or "percentage" means percentage by weight.

(k) The term "official sample" means any sample of feed taken by the chemist of the agricultural experiment station of Montana state college or his deputy and designated as "official" by the chemist.

(l) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed and/or customer-formula feed to animals pursuant to a contract whereby such commercial feed and/or customer-formula feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(m) The terms "purchaser" and "customer-buyer" mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

(n) The term "custom-mix" or "custom-mill" means services only.

(o) An ultimate consumer, means a person who feeds all or part of the feeds which he has received from the distributor.

History: En. Sec. 2, Ch. 127, L. 1963.

3-2014. Registration. (a) Each commercial feed shall be registered before being distributed in this state; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee of ten dollars (\$10.00) for each commercial feed submitted for registration. Upon the request of the commissioner, each such registration shall be accompanied by a

label or other printed matter describing the product, and shall include the information required by subparagraphs (2), (3), (4) and (5), of paragraph (a) of section 3-2015. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. Once registered, the registration of a feed shall be renewed by December 31 of each year by payment of an annual fee of ten dollars (\$10.00). Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this act by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted by the commissioner provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of the act and to cancel any registration subsequently found not to be in compliance with any provisions of this act; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this act.

History: En. Sec. 3, Ch. 127, L. 1963;
amd. Sec. 7, Ch. 248, L. 1965.

expenses of administering this act" for "general fund of the state" at the end of the first paragraph of subsection (a); and changed the form of the reference at the end of the third sentence of the first paragraph of subsection (a).

Amendment

The 1965 amendment substituted "state treasury to the credit of the earmarked revenue fund and shall be used for the

3-2015. Labeling. (a) Any commercial feed distributed in this state shall be accompanied by a legible label as approved by the commissioner, bearing the following information:

- (1) The net weight.
- (2) The name or brand under which the commercial feed is sold.
- (3) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added:
Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the commissioner. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods

and regulations that may be prescribed by the commissioner. Products sold solely as minerals and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function.

(5) The name and principal address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(1) Name and address of the mixer.

(2) Name and address of the purchaser.

(3) Date of sale.

(4) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(d) If a commercial feed or a customer-formula feed contains a non-nutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the commissioner may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

History: En. Sec. 4, Ch. 127, L. 1963.

3-2016. Inspection fees. (a) Each and every person who distributes commercial feed in this state to the ultimate consumer shall pay to the commissioner an inspection fee, based on the gross annual value of feed distributed in this state, according to the following schedule:

Up to and including five hundred dollars (\$500.00) gross annual value of feeds distributed.....\$10.00.

Over five hundred dollars (\$500.00) and up to and including one hundred thousand dollars (\$100,000.00) gross annual value of feeds distributed\$25.00.

Each and every twenty-five thousand dollars (\$25,000.00) additional gross annual value of feeds distributed or fraction thereof, an additional inspection fee of\$10.00;

provided, however, that distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds which are registered. Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

(1) File, not later than the last day of January of each year, a statement setting forth the gross annual value of feeds distributed in this state during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one (1) person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the gross annual value of feeds so distributed and paying the inspection fee.

(2) Keep such records as may be necessary or required by the commissioner to indicate accurately the gross annual value of commercial feeds distributed in the state, and the commissioner or his authorized agent shall have the right to examine such records to verify statement of gross annual value of feeds distributed. Failure to make an accurate statement of the gross annual value of feeds distributed or to pay the inspection fee or to comply as provided for in this section shall constitute sufficient cause for the cancellation of all registrations on file for the distributor after a hearing as provided in this act, and the distributor shall be subject to the penalties set forth in section 3-2023.

History: En. Sec. 5, Ch. 127, L. 1963; amd. Sec. 8, Ch. 248, L. 1965.

the second paragraph of subsection (a); and changed the form of the reference at the end of paragraph (b)(2).

Amendment

The 1965 amendment substituted "state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act" for "general fund of the state" at the end of

Repealing Clause

Section 9 of Ch. 248, Laws 1965 read "Section 1, Chapter 233 [223], Laws of 1963, compiled as section 84-1812(2), R. C. M. 1947, is repealed."

3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds. (a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which except for molasses, is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in section 4 (c) and (d) [3-2015 (c), (d)] of this act.

(b) No manufacturer or other person shall mix, mill, process or engage in a practice of mixing, milling, or preparation of a customer-formula feed without complying with the provisions of section 5 [3-2016] of this act.

(c) Under section 2 (d) [3-2013 (d)] of this act, the term "commercial feed" is defined to include customer-formula feed. This definition is hereby re-affirmed, and all of the provisions of this act which

apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed."

(d) The terms "custom-mixed," "custom-milled," or similar terms means the service rendered a customer or purchaser in the milling, mixing, or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, except that the addition of molasses acquired from the person who mixes, mills, or processes the mixture shall not be deemed to render such feed a commercial feed, and are not subject to the provisions of this act.

History: En. Sec. 6, Ch. 127, L. 1963.

3-2018. Adulteration. No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

History: En. Sec. 7, Ch. 127, L. 1963.

3-2019. Misbranding. No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another feed.

(c) If it is not labeled as required in section 4 [3-2015] of this act and in regulations prescribed under this act.

(d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in adopting of such regulations the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.

(e) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 8, Ch. 127, L. 1963.

3-2020. Inspection, sampling and analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial feeds and customer-formula feeds distributed within this state at such time and place and to such extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The chemist individually or through his deputy, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

(b) The method of sampling and analysis shall be those adopted by the chemist from sources such as the journal of the association of official agricultural chemists.

(c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (k) of section 2 [3-2013 (k)] and obtained and analyzed as provided for in paragraph (b) of section 9 [this section].

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of the analysis shall be forwarded by the chemist to the distributor and purchaser and registrant. Upon request within ten (10) days the chemist shall furnish to the registrant a portion of the official sample concerned. If the registrant fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of a list of not less than three (3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the registrant requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the registrant of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the registrant, then the figures of the registrant shall be considered correct.

History: En. Sec. 9, Ch. 127, L. 1963.

3-2021. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing; (1) having notified by mail all registrants on file and (2) having advertised once a week for two (2) consecutive weeks in two (2) newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial feeds as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before cancelling or revoking any registration, set the matter down for a hearing and at least ten (10) days prior to the date set

for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person, or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 10, Ch. 127, L. 1963.

3-2022. Detained commercial feeds. (a) "Withdrawal from sale" orders. When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or of any of the prescribed regulations under this act, he may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the district court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a district court of competent jurisdiction in the area in which said commercial feed is located.

In the event the district court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the district court without first giving the claimant an opportunity to apply to the district court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

History: En. Sec. 11, Ch. 127, L. 1963.

3-2023. Penalties. (a) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300.00) or more than five hundred dollars (\$500.00) for the first violation, and not less than three hundred dollars (\$300.00) or more than one thousand dollars (\$1,000.00) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of com-

mercial feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(b) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor and registrant to be heard before the commissioner pursuant to section 10 [3-2021] of this act.

(c) The commissioner is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred, to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. Said injunction to be issued without bond.

(d) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 12, Ch. 127, L. 1963.

3-2024. Publications. The commissioner may publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History: En. Sec. 13, Ch. 127, L. 1963.

Separability Clause

Section 14 of Ch. 127, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 15 of Ch. 127, Laws 1963 read "Repeal. The following sections listed in chapter 20 title 3, Revised Codes of Montana, 1947: 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, pertaining to the distribution of commercial feeds, are hereby repealed."

Effective Date

Section 16 of Ch. 127, Laws 1963 read "Effective date. This act shall take effect and be in force from and after the first day of January, 1964."

CHAPTER 22—POULTRY IMPROVEMENT

- Section 3-2201. Powers and duties of commissioner of agriculture.
 3-2201.1. Poultry improvement board abolished.
 3-2202. Definitions.

- 3-2203. Board to serve without compensation.
- 3-2204. Powers and duties.
- 3-2205. License fees.
- 3-2207. Disposition of fees.
- 3-2209. Products to be labeled.
- 3-2211. May cancel certificates.
- 3-2212. Violation a misdemeanor.

3-2201. Powers and duties of commissioner of agriculture. The commissioner of agriculture shall have the following powers and duties:

(1) To promote the welfare of the poultry industry in Montana by: (a) determining dependable sources from which poultry may be purchased; (b) co-operating with other state and federal agencies in programs which will advance, promote, and improve the poultry industry in Montana; (c) improving poultry breeding in Montana by certification of the systematic breeding programs of the various hatcheries within the state; (d) co-operating with the Montana livestock sanitary board in controlling and eradicating communicable and infectious diseases of poultry; (e) by systematic inspection of chick dealers, hatcheries and hatching-egg-producers engaged in marketing poultry and poultry products.

(2) To act as the official state agency for Montana in co-operation with the animal and poultry research branch, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.

The commissioner of agriculture shall appoint a poultry advisory board consisting of the extension specialist on poultry, Montana state college, and two other members who shall be competent and experienced poultrymen, who shall be the owners or operators of commercial poultry hatcheries. The commissioner may call on this board from time to time for advice in administering the poultry improvement program.

History: En. Sec. 1, Ch. 141, L. 1945; amd. Sec. 1, Ch. 46, L. 1957; amd. Sec. 2, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the preliminary paragraph for a paragraph reading, "There is hereby created a board to be known as the 'Montana Poultry Improvement Board.' This board is created for the following purposes:"; deleted

from the end of subd. (2) a sentence reading, "These purposes are to be liberally construed in order that this board may effectuate programs which will be beneficial to the poultry industry in Montana"; and substituted the final paragraph, establishing the advisory board, for a paragraph relating to the composition of the poultry improvement board, for the text of which see parent volume.

3-2201.1. Poultry improvement board abolished. The Montana poultry improvement board is abolished. All records and property, including unexpended appropriations, and any other moneys of the Montana poultry improvement board are transferred to the department of agriculture.

History: En. Sec. 1, Ch. 59, L. 1961.

Title of Act

An act to abolish the Montana poultry improvement board and transfer the duties of said board to the commissioner of agriculture by amending sections 3-2201,

3-2202, 3-2204, 3-2205, 3-2207, 3-2209, 3-2211 and 3-2212, Revised Codes of Montana, 1947, and by amending section 3-2203, Revised Codes of Montana, 1947, providing that said board shall serve without compensation.

3-2202. Definitions. As used in this act unless the context otherwise requires, "commissioner" means the "commissioner of agriculture."

"Breeder" means any person, firm, corporation or association that breeds, handles or deals in chickens, ducks, geese, turkeys or other domestic fowl.

"Hatcher" means any person who is in the business of hatching the eggs of chickens, ducks, geese, turkeys or other domestic fowl by natural or artificial means.

"Distributor" means any person, who is in the business of distributing, selling, or otherwise disposing of to the public of baby, young or other chickens, ducks, geese, turkeys or other domestic fowl, or eggs for hatching purposes including what is known as "over the counter sale" of baby chicks.

"Hatching-egg-producer" means any person who keeps poultry and from such poultry produces eggs for sale or other disposal for hatching purposes.

"Poultry" means chickens, ducks, geese, turkeys or other domestic fowl.

History: En. Sec. 2, Ch. 141, L. 1945; amd. Sec. 3, Ch. 59, L. 1961.

means the state agency created by this act to be known as 'The Montana Poultry Improvement Board'; and deleted the former second paragraph reading, "'Person' means any person, firm, corporation or association."

Amendment

The 1961 amendment in the first paragraph, substituted the definition of "commissioner" for a definition reading "board"

3-2203. Board to serve without compensation. The members of the Montana poultry advisory board shall serve without compensation as such, but the expenses of each, necessarily incurred in the discharge of his duties, shall be paid by the state.

History: En. Sec. 3, Ch. 141, L. 1945; amd. Sec. 10, Ch. 59, L. 1961.

tana poultry advisory board" for "Montana poultry improvement board" and deleted five sentences, for the text of which see parent volume.

Amendment

The 1961 amendment substituted "Mon-

3-2204. Powers and duties. The commissioner is authorized and directed to formulate and adopt a plan or plans whereby hatchery, baby chick and/or poult dealers and hatching-egg-producers shall be inspected by employees of the department of agriculture.

No one shall be refused a license or have his license cancelled under this act unless and until he has been given an opportunity to have a hearing on the matter before the commissioner. The person concerned may obtain same by submitting a written request to the commissioner for such hearing. The commissioner, in setting the time for hearing, shall give at least twenty (20) days' notice of said hearing to such person. The commissioner will adopt reasonable rules and regulations governing the conduct of hearings and shall specifically provide that any person requesting such hearing be permitted to be represented by legal counsel.

The commissioner may adopt a standard breeding plan of accreditation and certification sponsored by the United States department of agriculture or any other plan sponsored by said department and to co-operate with said department in matters of poultry improvement and sanitary provisions. The commissioner is further authorized to prescribe and

collect fees for inspection and supervision and to prescribe and furnish labels, bands and certificates of accreditation and certification and such other supplies as may be necessary; and to prescribe and collect fees for the same. The commissioner is further authorized to do such other things as he may deem needful and expedient to improve poultry breeding, poultry sanitation, and practices, and to give effect to this act.

History: En. Sec. 4, Ch. 141, L. 1945; amd. Sec. 2, Ch. 46, L. 1957; amd. Sec. 4, Ch. 59, L. 1961.

Amendment

The 1961 amendment deleted three sentences at the beginning of the section providing for employment by the former improvement board of a secretary and executive officer, other employees and legal assistance, for text of which see parent volume; at the end of the first

paragraph substituted "employees of the department of agriculture" for "employees of the board or such other person as may be designated by the board"; substituted "commissioner" for "board" elsewhere throughout the section; substituted "a" for "the" before "standard breeding plan" in the first sentence of the third paragraph and deleted from the end of the first sentence of the third paragraph the words, "and indemnity in case of infectious disease."

3-2205. License fees. No person shall hereafter engage in the business of a hatchery, baby chick and/or poult dealer, salesman, or hatching-egg-producer in Montana, without first securing from the commissioner a license to engage therein, which license shall expire on the first day of January of each year, except in cases of flock owners, and in those cases the license shall expire twelve (12) months after the last official pullorum test was conducted by the livestock sanitary board.

Licenses will be issued only upon payment to said commissioner of such annual fees as may be fixed by said commissioner for each of the said occupations, not exceeding, however, the amounts herein set forth, to-wit: (a) hatcheries—under 50,000 capacity—\$10.00; (b) hatcheries—over 50,000 capacity—\$25.00; (c) baby chick and/or poult dealers and salesmen—\$5.00; (d) breeders, hatching-egg-producers, the sum of \$1.00 up to 200 breeder hens; \$2.50 up to 400 breeder hens; \$5.00 up to 800 breeder hens; \$7.50 up to 1,250 breeder hens; \$10.00 over 1,250 breeder hens per year.

History: En. Sec. 5, Ch. 141, L. 1945; amd. Sec. 3, Ch. 46, L. 1957; amd. Sec. 5, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "the

livestock sanitary board" for "the board" at the end of the first paragraph; and substituted "commissioner" for "board" or "Montana poultry improvement board" elsewhere throughout the section.

3-2207. Disposition of fees. All fees collected under this act shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 7, Ch. 141, L. 1945; amd. Sec. 6, Ch. 59, L. 1961; amd. Sec. 41, Ch. 147, L. 1963.

Amendments

The 1961 amendment rewrote this section to read: "Ninety-five per cent (95%) of all fees collected under this act shall be

deposited in the state treasury to the credit of the Montana poultry improvement fund, and five per cent (5%) of all such fees shall be deposited in the state treasury to the credit of the general fund."

The 1963 amendment again rewrote the section to read as above.

3-2209. Products to be labeled. All poultry and products sold or shipped under the authority of this act shall be uniformly labeled with designs prescribed and furnished by the commissioner, provided that all

labeling for testing, approval and accreditation as to disease shall be first approved by the Montana livestock sanitary board.

History: En. Sec. 9, Ch. 141, L. 1945; amd. Sec. 4, Ch. 46, L. 1957; amd. Sec. 7, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" for "Montana poultry improvement board."

3-2211. May cancel certificates. In his discretion the commissioner may cancel any certificate of accreditation or certification issued under his authority. Likewise the secretary and executive officer of the Montana livestock sanitary board may cancel any certificate of testing, approval or accreditation issued under the authority of his board for violation of this act or any rule or regulation adopted hereunder; and any person, firm, association, partnership or corporation who shall violate any provision of this act or any regulation adopted hereunder shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 141, L. 1945; amd. Sec. 8, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" in the first sentence for the

words "secretary and executive officer of the Montana poultry improvement board" substituted "his authority" in the first sentence for "the authority of his board"; and changed the punctuation so as to divide the section into two sentences.

3-2212. Violation a misdemeanor. Violation of any of the provisions of this act shall be a misdemeanor; and as additional or alternative penalties, the commissioner may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act.

History: En. Sec. 12, Ch. 141, L. 1945; amd. Sec. 5, Ch. 46, L. 1957; amd. Sec. 9, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the word "commissioner" for "board."

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

- Section 3-2301. Egg dealer's license—fee.
 3-2302. Remittance of fees.
 3-2312. Montana state egg seal.
 3-2313. Licensed egg graders.
 3-2315. Disposal of license fees.

3-2301. (2634.1) Egg dealer's license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell more than an average of 25 cases of eggs per month for any one year, other than those produced by fowls owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars (\$5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be twenty dollars (\$20.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee specified in the second sentence from \$2.00 to \$5.00.

3-2302. (2634.2) Remittance of fees. All license fees shall be remitted to the department of agriculture, dairy division, who shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; amd. Sec. 42, Ch. 147, L. 1963.

posit them in the state treasury to the credit of the general fund" for "disburse them for the enforcement of this act as provided in section 3-2310."

Amendment

The 1963 amendment substituted "de-

3-2312. (2634.12) Montana state egg seal. The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed two dollars (\$2.00) per thousand. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 151, L. 1939; amd. Sec. 1, Ch. 13, L. 1957; amd. Sec. 6, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the maximum cost of the seal specified at the end of the first sentence from 1½ mills per dozen eggs to \$2.00 per thousand.

3-2313. (2634.13) Licensed egg graders. All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be five dollars (\$5.00) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance.

History: En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee specified in the second sentence from \$2.50 to \$5.00.

3-2315. Disposal of license fees. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939; amd. Sec. 43, Ch. 147, L. 1963.

eral fund" for "revolving fund of the dairy division of the department of agriculture, labor and industry."

Amendment

The 1963 amendment substituted "gen-

CHAPTER 24—DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

Section 3-2407. Keeping of samples.

3-2410. Babcock test—license and operation.

3-2411. Temporary permit to operate Babcock test.

3-2417. Licensing of milk and cream buying stations.

3-2466. Cream grader, weigher and sampler license and examination.

3-2476. "Ice cream" defined—ingredients—standards.

3-2407. (2620.7) Keeping of samples. All persons purchasing milk or cream, for manufacture, sale or shipment, and paying for the same on the basis of the butter fat contained therein as determined by the Babcock test, shall immediately upon receiving such milk or cream, take a representative sample thereof. Such samples shall not be less than two (2) ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation or the escape of any of the contents thereof. All samples taken shall be plainly marked or labeled and such mark or label shall be entered on the records of the purchaser to correspond with the name of the person from whom the purchase was made and such record shall also show the weight of the milk or cream. Such samples shall then be protected from the extremes of heat and cold until five (5) o'clock P. M. of the following day, unless the next day be Sunday or any other holiday in which event the samples shall be held until five (5) o'clock P. M. of the next day following such holiday. During the period that samples are so held, after the making of the test by the person taking same, they shall be opened only in the presence of the commissioner of agriculture, or his authorized agent. Nothing in this section shall prohibit the weighing and sampling of milk from farm bulk milk tanks, or the use of composite samples of milk according to rules and regulations adopted by the commissioner of agriculture, in the best interests of milk producers, consumers and processors and for the protection of their mutual interests.

History: En. Sec. 7, Ch. 93, L. 1929; amd. Sec. 1, Ch. 45, L. 1961.

Amendment

The 1961 amendment deleted a former second sentence, which read: "If any of said milk or cream shall be left on hand at any milk or cream buying or collecting stations, the operator of such stations shall likewise take a representative sample of the same"; deleted from the end of the

present third sentence the words, "if any, left on hand after shipment is made"; deleted "labor and industry" after "commissioner of agriculture" in the present fifth sentence; and added the last sentence.

Repealing Clause

Section 2 of Ch. 45, Laws 1961 repealed all acts and parts of acts in conflict therewith.

3-2410. (2620.10) Babcock test—license and operation. The Babcock test is hereby adopted as the official dairy test for use in the state of Montana. No person shall operate the Babcock test in any creamery, cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat content without first passing the examination and securing the license hereinafter provided for. Any person desiring to operate the Babcock test at any of the places enumerated in this section, shall apply to the department of agriculture, labor and industry for permission to take the Babcock test operator's examination. Such examination shall be given to the applicant by the chief of the dairy division of the department, or his representative. Upon passing said examination to the satisfaction of the examining official, the applicant shall be issued a license authorizing him to operate the Babcock test in the state of Montana for a period of one year. A fee of five dollars (\$5.00) shall be paid for each such original license and a fee of three dollars (\$3.00) for each renewal thereof. All such licenses shall expire on December 31st of each year.

History: En. Sec. 10, Ch. 93, L. 1929; inal license fee specified in the sixth
amd. Sec. 2, Ch. 121, L. 1965. sentence from \$2.00 to \$5.00 and the re-
newal fee from \$1.00 to \$3.00.

Amendment

The 1965 amendment increased the orig-

3-2411. (2620.11) Temporary permit to operate Babcock test. Any person who shall desire an immediate license to operate the Babcock test before it is reasonably convenient for the department to give the examination provided for in the preceding section, may apply to the department for a temporary permit to operate the Babcock test, stating in his application what training or experience he has had in the use or operation of the same. The department may thereupon in its discretion issue to the applicant a temporary permit to operate the Babcock test, which shall entitle the holder to operate said test pending the giving of the examination prescribed in the preceding section. Application for such temporary permit shall be accompanied with a fee of five dollars (\$5.00) which shall pay for the first regular Babcock test operator's license thereafter issued to such applicant. If applicant fails in his examination, or discontinues operation of Babcock test before examination can be given, he forfeits fee of five dollars (\$5.00) paid for such license.

History: En. Sec. 11, Ch. 93, L. 1929; **Amendment**
amd. Sec. 1, Ch. 121, L. 1965.

The 1965 amendment increased the license fee specified in the second paragraph from \$2.00 to \$5.00.

3-2417. (2620.17) Licensing of milk and cream buying stations. It shall be unlawful for any person to operate or carry on any milk or cream buying or collection station without first securing from the department an annual license to do so, which said license shall expire on the 31st day of December of each year.

The following schedule of fees shall be charged by the department for all such licenses:

All stations handling less than three thousand pounds (3,000 lbs.) ten dollars (\$10.00); all stations handling three thousand pounds (3,000 lbs.) or over per month and less than six thousand pounds (6,000 lbs.) fifteen dollars (\$15.00); all stations handling six thousand pounds (6,000 lbs.) or more per month, twenty dollars (\$20.00). In computing the annual license to be paid under this section, the highest month's business of such station during the year immediately preceding the application for such license shall determine the amount of the fee.

History: En. Sec. 17, Ch. 93, L. 1929; increase the license fee for stations handling less than 1,500 pounds of butter fat
amd. Sec. 5, Ch. 121, L. 1965. per month from \$5.00 to \$10.00.

Amendment

The 1965 amendment rewrote the first sentence in the third paragraph so as to

3-2466. (2620.66) Cream grader, weigher and sampler license and examination. No person shall grade, weigh or sample any milk or cream used or to be used in the manufacture of butter, cheese or other dairy products in the state of Montana, without first procuring a license as a cream grader, weigher and sampler from the department of agriculture, and passing

such examination therefor as may be provided by said department; provided, however, that temporary permits pending the taking of such examination may be issued by the department for a period of not to exceed thirty (30) days. A fee of five dollars (\$5.00) shall be paid by the applicant for such license or permit and said license shall expire and be renewable on December 31st of each year.

History: En. Sec. 64 by Sec. 10, Ch. 39, L. 1931; amd. Sec. 3, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee specified in the final sentence from \$2.00 to \$5.00.

3-2476. "Ice cream" defined—ingredients—standards. (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in subsection (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in subsection (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than four and one-half (4½) net pounds per gallon.

(b) to (g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 172, L. 1953; amd. Sec. 1, Ch. 20, L. 1963.

quired weight of ice cream, as specified at the end of subsection (a), from 4¼ to 4½ pounds per gallon.

Amendment

The 1963 amendment increased the re-

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

Section 3-2503. Procurement and use of labels—information concerning—disposal of moneys.

3-2503. Procurement and use of labels—information concerning—disposal of moneys. (a) The commissioner may cause to be made, printed,

or otherwise prepared, from time to time, such quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of the said continuous official inspection service. Nothing in this act, however, shall be construed to preclude the commissioner from permitting, under the rules and regulations by him prescribed, any such producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise placed or cause to be placed the Montana quality label, upon such products or containers thereof which have been subject to continuous inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the commissioner, may from time to time determine. (b) The commissioner is further authorized, in cooperation with the United States department of agriculture and/or otherwise, to make use of any available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize the use thereof. (c) All moneys derived from the furnishing of said labels, tags, and seals, or from permitting the use in any other manner of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963.

credit of the general fund" for "constitute a fund to defray the cost of preparing and furnishing such labels, tags, and seals and the cost of such dissemination and popularization" at the end of subd. (c).

Amendment

The 1963 amendment substituted "be deposited in the state treasury to the

CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

Section 3-2704. Purchase and sale of rodent control supplies.

3-2703. Repealed.

Repeal

This section (Sec. 3, Ch. 136, L. 1949), making an appropriation for control of

noxious rodent pests, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-2704. Purchase and sale of rodent control supplies. In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such co-operators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963.

from the end of this section which created a rodent control fund. For previous text, see parent volume.

Amendment

The 1963 amendment deleted a sentence

CHAPTER 28—RURAL REHABILITATION

Section 3-2803. Administration of trust assets.

3-2803. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department of agriculture for the purpose of section 3-2802, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963.

Compiler's Note

Public Law 499, referred to in this section will be found in the United States Code, tit. 40, secs. 440 to 444.

Amendment

The 1963 amendment substituted "the

federal and private grant clearance fund and used" for "a special fund to be known as the 'Montana Farm Loan Fund' which fund shall be maintained as a revolving fund"; deleted a last sentence reading: "The state treasurer and state auditor are hereby directed to open and maintain accounts upon their respective books for said fund"; and made minor changes in phraseology.

CHAPTER 29—WHEAT RESEARCH AND MARKETING

Section 3-2901. Short title.

3-2902. Declaration of policy.

3-2903. Creation of wheat research and marketing division—appointment of division chief—powers and duties exercised by administrative committee.

3-2904. Definitions.

3-2905. Governor to appoint administrative committee—duties—composition—districts—nominees—term of office—political affiliations.

3-2906. Compensation—per diem.

3-2907. Removal from office—cause—procedure.

3-2908. Election of chairman—time of meetings.

3-2909. Powers of administrative committee.

3-2910. Establishment of administrative office—expense.

3-2911. Annual assessment on wheat grown.

3-2912. Sale of wheat to federal government—inapplicability of assessment.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.

3-2914. Commissioner to file annual report with governor—transmittal of copies to legislature.

3-2915. Receipt of gifts, grants or donations for research purposes.

3-2916. Official bonds of division chief, deputy or assistant.

3-2917. Research and marketing revolving account—sources—use—expenditures.

3-2918. Contracts for carrying out research.

3-2919. Violations of act—penalty.

3-2920. Duration of act—expiration—reversion of remaining funds.

3-2901. Short title. This act may be cited as the Montana Wheat Research and Marketing Act.

History: En. Sec. 1, Ch. 314, L. 1967.

Title of Act

An act to create a division of wheat

and marketing research in the Montana department of agriculture to conduct research into all phases of wheat culture, production, marketing and use; levying

an assessment of two and one-half ($2\frac{1}{2}$) mills per bushel of wheat on the grower to cover the expense of research and the administration of this act; providing for an effective date, August 20, 1967.

3-2902. Declaration of policy. In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat culture and production, marketing and use and into the development of markets for wheat grown in Montana by the department of agriculture of the state of Montana and the division of wheat research therein as constituted by this act.

History: En. Sec. 2, Ch. 314, L. 1967.

3-2903. Creation of wheat research and marketing division—appointment of division chief—powers and duties exercised by administrative committee. (1) There is hereby established a division of wheat research and marketing in the department of agriculture of the state of Montana. The division shall consist of:

- (a) the appointive administrative committee herein provided for,
- (b) the commissioner of agriculture, ex-officio, and
- (c) a chief executive officer of the division who shall be known as the chief of the division of wheat research and marketing.

(2) The commissioner of the department of agriculture, acting with the advice and consent of the appointive administrative committee, shall appoint the chief of the division of wheat research and marketing, and subordinate secretarial and clerical assistance.

(3) No researchers or professional or scientific personnel may be employed to carry out the provisions of this act except as provided in section 18 [3-2918].

(4) The other powers prescribed by this act for the division are hereby placed in and may be exercised by the administrative committee; the duties prescribed by this act shall be carried out by the administrative committee and it shall have the general supervision of all activities and personnel, but it may delegate details of supervision and administration to the chief of the division of wheat research and marketing, or to the commissioner of agriculture.

History: En. Sec. 3, Ch. 314, L. 1967.

3-2904. Definitions. As used in this act, unless the context otherwise requires:

(1) "Committee" means the administrative committee hereby established to be known as the Montana wheat research and marketing committee;

(2) "Grower" means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, claim;

(4) "Commercial channels" means the sale of wheat for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat or product produced from wheat; and

(5) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967.

3-2905. Governor to appoint administrative committee—duties—composition—districts—nominees—term of office—political affiliations. (1) The governor of the state of Montana shall appoint an administrative committee to be known as the Montana wheat research and marketing committee, which committee shall:

(a) advise and direct the chief executive officer of the division of wheat research and marketing; and

(b) be primarily responsible for the enforcement and application of this act; and

(c) be responsible for conducting basic researches and market development and other programs of the division and its objectives as herein stated.

(2) The administrative committee shall be composed of:

(a) seven (7) members each of whom is a citizen of Montana, and each of whom derives a substantial portion of his income from growing wheat in Montana,

(b) three (3) ex-officio members (who shall not vote upon any decisions, orders or regulations of the administrative committee):

(i) the commissioner of the department of agriculture,

(ii) the dean of agriculture of Montana state university,

(iii) a representative of the grain trade in Montana who is elected by majority vote of the seven (7) appointed members of the administrative committee, and who shall serve at the pleasure of the administrative committee.

(3) One member of the administrative committee shall be appointed from each of the following districts, and shall be a resident of, and shall have farming operations in the district from which appointed:

District I. consisting of Daniels, Sheridan and Roosevelt counties.

District II. consisting of Valley, Phillips, Blaine and Hill counties.

District III. consisting of Liberty, Toole, Glacier and Pondera counties.

District IV. consisting of Chouteau and Teton counties.

District V. consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley and Musselshell counties.

District VI. consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties lying west of the continental divide.

District VII. consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.

(4) A list of nominees for appointment to the administrative committee may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana graingrowers association. Each nominee must be from the district for which the appointment will be made. The first list of nominees shall be submitted in less than thirty-one (31) days after the effective date of this act and thereafter names of nominees shall be submitted in less than ninety-one (91) days prior to the expiration of any committeeman's term.

(5) Committee members shall be appointed for a term of five (5) years, except that the terms of office of the committee members first appointed shall be as follows:

District I for four (4) years;

District II for five (5) years;

District III for five (5) years;

District IV for one (1) year;

District V for two (2) years;

District VI for four (4) years;

District VII for three (3) years.

(6) No more than four (4) appointed members of the committee may be of the same political party. Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

History: En. Sec. 5, Ch. 314, L. 1967.

Cross-Reference

Effective date of this act, sec. 3-2920.

3-2906. Compensation—per diem. Members of the administrative committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the revolving fund, a per diem of twenty dollars (\$20) for each day they are actually and necessarily engaged in the transaction of official business under this act, together with their actual and necessary expenses incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967.

3-2907. Removal from office—cause—procedure. Any member of the administrative committee shall be removable by the governor for malfeasance, misfeasance or neglect of duty. No removal proceedings may be entertained or prosecuted except upon written charges, duly verified. The

member shall first be given a copy of the written charges against him upon any one or more of said grounds at least ten (10) days in advance of any hearing upon the charges, and the member shall be accorded a full and fair public hearing before the governor with right to counsel and to witnesses in his behalf. Any member of the administrative committee:

- (1) ceasing to be a resident of the state of Montana,
- (2) ceasing to live in the district from which he was appointed, or
- (3) ceasing to be actually engaged in growing wheat in said state or district,

shall be automatically disqualified from continuing as a member by the happening of any one or more of such events. If the member refuses to recognize his disqualification, the refusal shall constitute cause for removal, and his office as committee member shall become vacant.

History: En. Sec. 7, Ch. 314, L. 1967.

3-2908. Election of chairman—time of meetings. At the first meeting of the administrative committee, it shall elect a chairman from among its members. The committee shall meet at least once every three (3) months and at such other times as called by the chairman or by any three (3) members of the committee.

History: En. Sec. 8, Ch. 314, L. 1967.

3-2909. Powers of administrative committee. The administrative committee shall have the power to:

- (1) Adopt rules and regulations as are necessary and advisable to effect efficient administration of this act;
- (2) Promptly and effectively to enforce the provisions of this act; and
- (3) To conduct adequate, intensive and timely research into the production, marketing and uses of wheat in all phases and relationships.
- (4) Enter into written contracts or agreements with recognized research agencies, public or private, within or without the state of Montana, for the purposes of, but not limited to, improving wheat quality, increasing the efficiency of production, developing marketing knowledge, developing markets and determining new uses for wheat and developing alternative crops for wheat.

None of the duties, authorities and powers set forth in this act and delegated to the administrative committee shall be construed to mean or permit participation in state or federal political action.

History: En. Sec. 9, Ch. 314, L. 1967.

3-2910. Establishment of administrative office—expense. The department of agriculture shall upon recommendation of the administrative committee, establish an administrative office in the state of Montana at such place as may be suitable for the efficient administration of this act; the expense of staffing and maintaining the same to be an expense of administration under this act.

History: En. Sec. 10, Ch. 314, L. 1967.

3-2911. Annual assessment on wheat grown. There is hereby levied an annual assessment of two and one-half ($2\frac{1}{2}$) mills per bushel upon all

wheat grown in the state of Montana, and sold through commercial channels beginning August 20, 1967. The assessment is hereby levied and imposed on each grower of wheat in the state of Montana unless a grower or his agent at the time of transaction shall request in writing that no assessment be made:

(1) in the case of sale of wheat, at the time of any sale of wheat by a grower, and shall be collected by the first purchaser of the wheat from the grower at the time of each settlement for wheat purchased, or

(2) in the case of a pledge or mortgage of wheat as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat grower parts with title to the wheat, or creates some interest therein in a pledgee, mortgagee or other person.

History: En. Sec. 11, Ch. 314, L. 1967.

3-2912. Sale of wheat to federal government—inapplicability of assessment. The assessment herein levied and imposed by the provisions of this act, shall not apply to the sale of wheat to the federal government, for ultimate use or consumption by the people of the United States, where the state of Montana is prohibited from imposing such tax by the constitution of the United States and valid laws enacted pursuant thereto.

History: En. Sec. 12, Ch. 314, L. 1967.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment. (1) The purchaser of the wheat at the time of settlement therefor on sale, or the pledgee or mortgagee or other lender at the time of its loan or advance, shall make and deliver separate invoices for each purchase to the grower. Such invoices shall be on forms approved by the administrative committee showing

- (a) the name and address of the grower and seller,
- (b) the name and address of the purchaser or the lender,
- (c) the number of bushels of wheat sold, mortgaged or pledged,
- (d) the date of the purchase, mortgage or pledge and the amount of assessment collected and remitted to the commissioner of agriculture.

(2) The purchaser, mortgagee, or pledgee shall deliver to and have on file with the wheat research and marketing division of the department of agriculture, on forms prescribed by the division, by the twentieth (20th) day of each calendar month following any calendar month in which purchaser shall purchase wheat of a grower or in which a lender makes any loan or advance on wheat of a grower beginning on August 20 in the year 1967, a sworn statement of the number of bushels of wheat purchased in Montana or the number of bushels mortgaged or pledged, or otherwise

transferred or liened as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay and remit to the commissioner the assessment provided for in this act for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsection (1) of this section 13, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

History: En. Sec. 13, Ch. 314, L. 1967.

3-2914. Commissioner to file annual report with governor—transmittal of copies to legislature. The commissioner of agriculture and the chief of the wheat research and marketing division shall make an annual report, at least thirty (30) days prior to January 1 of each year, showing all income to and expenses and expenditures of the wheat research and marketing division in comprehensive detail. The report shall be filed with the governor, and shall be open to inspection of the public during office hours and may be published by order of the division. A duplicate original of each annual report made during any recess of the legislative assembly shall be transmitted by the commissioner of agriculture directly to the president of the senate and to the speaker of the house of representatives within five (5) days after the convening of each biennial session of the legislative assembly.

History: En. Sec. 14, Ch. 314, L. 1967.

3-2915. Receipt of gifts, grants or donations for research purposes. The Montana wheat research and marketing division is hereby authorized to receive any gifts, grants or donations for any research of scientific inquiries conducted under authority of this act, and to use and expend the same in compliance with the conditions, if any, of such grants, gifts and donations, provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act.

History: En. Sec. 15, Ch. 314, L. 1967.

3-2916. Official bonds of division chief, deputy or assistant. The chief of the Montana wheat research and marketing division and any deputy or assistant participating in the handling of assessment receipts or other receipts by or for the division, shall be bonded for the faithful and safe handling and accounting for such receipts while in their hands and for faithful compliance with the provisions of this act.

History: En. Sec. 16, Ch. 314, L. 1967.

3-2917. Research and marketing revolving account—sources—use—expenditures. (1) There is hereby established an account in the revolving fund to be known as the wheat research and marketing revolving account. There shall be placed in the account:

(a) the proceeds of all millage levies made, paid and collected under this act, and

(b) the proceeds from all gifts, grants or donations to the department of agriculture for the use of the researches conducted by the division of wheat research and marketing.

(2) The account shall be maintained for the use of the wheat research and marketing division of the department of agriculture and shall be separate and apart from all other accounts of the department.

(3) There shall be transferred to the general fund one per cent (1%) of all the moneys collected.

(4) There shall be paid out of this account claims for expenditures under this act as are approved by the commissioner of agriculture and the state controller.

History: En. Sec. 17, Ch. 314, L. 1967.

3-2918. Contracts for carrying out research. The Montana wheat research and marketing committee shall not set up research units or agencies of its own but shall co-operate and is hereby empowered to enter into contracts with Montana state university and other lawful and proper local, state, or national organizations, public or private, in carrying out all phases of research and marketing contemplated by this act.

History: En. Sec. 18, Ch. 314, L. 1967.

3-2919. Violations of act—penalty. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

History: En. Sec. 19, Ch. 314, L. 1967.

3-2920. Duration of act—expiration—reversion of remaining funds. This act shall be in full force and effect from August 20, 1967 for a period of seven (7) years. If this act is not renewed through legislative action to extend beyond seven (7) years, any money remaining that has been collected under this act shall revert to the Montana state university to be used exclusively for wheat research.

History: En. Sec. 21, Ch. 314, L. 1967.

Separability Clause

Section 20 of Ch. 314, Laws 1967 read:
"It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

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TITLE 4—ALCOHOLIC BEVERAGES

- Chapter 1. State liquor control act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-102, 4-104 to 4-106, 4-108, 4-110, 4-112, 4-113, 4-116, 4-134, 4-136 to 4-140, 4-153, 4-159, 4-164, 4-172, 4-173.
2. State liquor control act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-201, 4-202, 4-229, 4-230, 4-234.
3. Montana beer act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-318, 4-324, 4-329, 4-332, 4-333, 4-341, 4-347, 4-349.
4. Montana retail liquor license act—sales by licensees of board, 4-403, 4-407.1, 4-409.1, 4-414.
5. Identification cards, 4-501, 4-502.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA— LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

- Section 4-102. Definitions.
- 4-104. Montana liquor control board—creation—qualifications—term.
- 4-105. Liquor control board—compensation—meetings.
- 4-106. Appointment of state liquor administrator and assistant—oath of office of board members—quorum.
- 4-108. Salaries of state liquor administrator and other employees—duties of assistant administrator.
- 4-110. State liquor administrator—oath.
- 4-112. Functions, powers and duties of board.
- 4-113. Regulations may be made by board—scope of regulations.
- 4-116. Provisions concerning sale of liquor and beer by vendors.
- 4-134. Druggist allowed liquor—sale of liquor by druggist, when authorized.
- 4-136. Physician allowed liquor—restrictions—violations.
- 4-137. Dentist allowed liquor—restrictions—violations.
- 4-138. Liquor allowed veterinary—restrictions—violations.
- 4-139. Hospitals and sanitariums—restrictions—violations.
- 4-140. Application of act.
- 4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
- 4-159. Persons not to consume liquor or be intoxicated in public places.
- 4-164. Interdicted persons—presence on liquor store or beer licensee's premises forbidden.
- 4-172. Bottle clubs prohibited.
- 4-173. Violation—penalty—abatement as nuisance.

4-101. (2815.60) Citation of state liquor control act.

- | | |
|---------------------------------------|---------------------------------------|
| References | 2d 606; State ex rel. City of Libby v |
| Alpha Industries, Inc. v. Montana | Haswell, — M —, 414 P 2d 652. |
| Liquor Control Board, 146 M 23, 403 P | |

4-102. (2815.61) Definitions. The following words and phrases used in this act shall take the following interpretations:

- (a) to (1). * * * [Same as parent volume.]
- (m). * * * [Same as (n) in parent volume.]
- (n). * * * [Same as (o) in parent volume.]
- (o). * * * [Same as (p) in parent volume.]
- (p). * * * [Same as (q) in parent volume.]
- (q). * * * [Same as (r) in parent volume.]
- (r). * * * [Same as (s) in parent volume.]

- (s). * * * [Same as (t) in parent volume.]
 (t). * * * [Same as (u) in parent volume.]
 (u). * * * [Same as (v) in parent volume.]
 (v). * * * [Same as (w) in parent volume.]

History: En. Sec. 2, Ch. 105, L. 1933; amd. Sec. 1, Ch. 209, L. 1949; amd. Sec. 2, Ch. 154, L. 1965.

a permit for the purchase of liquor issued under this act"; and appropriately redesignated the succeeding paragraphs.

Amendment

The 1965 amendment deleted a paragraph (m) which read, "Permit means

References

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

4-104. (2815.63) Montana liquor control board—creation—qualifications—term. The "Montana Liquor Control Board" shall consist of five (5) members not more than three (3) of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five (5) years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four (4) years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one (1) of such members shall be appointed to hold office for a term of two (2) years, and two (2) of such members shall be appointed to hold office for a term of four (4) years, and the two (2) additional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one (1) shall end March 1, 1939, and the term of two (2) shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four (4) years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 268, L. 1953.

Amendment

The 1963 amendment increased the size of the board from three to five members; increased the maximum number of members from one political party from two to three; inserted in the second sentence the clause reading, "and the two (2) addi-

tional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years"; deleted a proviso pertaining to the time for nomination of the first members of the board; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 268, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 15, 1963.

4-105. Liquor control board—compensation—meetings. Each of the members of the Montana liquor control board shall receive, as compensa-

tion for his official services, the sum of twenty dollars (\$20) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred dollars (\$1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 235, L. 1957; amd. Sec. 1, Ch. 151, L. 1963.

Amendment

The 1963 amendment increased the compensation of board members from \$15 to \$20 per diem.

4-106. Appointment of state liquor administrator and assistant—oath of office of board members—quorum. The board shall choose one (1) of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the board and who shall be ex officio the secretary of the board. The board may also, in its discretion, appoint an assistant state liquor administrator and other employees. Each member of the board shall take and file the constitutional oath of office before entering the performance of his duties. A majority of the members of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 11, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the end of the third sentence a clause reading, "and he shall give bond conditioned for the faithful performance of his duties, in the sum of twenty-five thousand dollars (\$25,000.00)."

4-107. General powers and duties of the board.

References

Alpha Industries, Inc. v. Montana

Liquor Control Board, 146 M 23, 403 P 2d 606.

4-108. (2815.63) Salaries of state liquor administrator and other employees—duties of assistant administrator. The board shall fix the following salaries of its employees at such sums as it deems advisable, to wit: The salary of the state liquor administrator in a sum not exceeding eleven thousand five hundred dollars (\$11,500) per year; the salary of the assistant state liquor administrator in a sum not exceeding ten thousand dollars (\$10,000) per annum; the salary of the supervisor of the accounting department not exceeding nine thousand dollars (\$9,000) per annum; the salaries of the supervisors of the data processing department and the license department in a sum not exceeding seventy-five hundred dollars (\$7,500) per annum each; the salary of the supervisor of the warehouse department in a sum not exceeding seven thousand dollars (\$7,000) per annum; the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors

in a sum not exceeding six thousand six hundred dollars (\$6,600) per annum each; the salary of a vendor of a "Class A" store in a sum not exceeding six thousand six hundred dollars (\$6,600) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding five thousand seven hundred fifty dollars (\$5,750) per annum; the salary of any other employee of a "Class A" store in a sum not exceeding five thousand four hundred dollars (\$5,400) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding five thousand five hundred dollars (\$5,500) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding four thousand five hundred thirty-five dollars (\$4,535) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding four thousand nine hundred dollars (\$4,900) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding the sum of four thousand dollars (\$4,000) per annum; the salary of any other employee of the board in the sum not exceeding six thousand six hundred dollars (\$6,600) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957; amd. Sec. 2, Ch. 151, L. 1963; amd. Sec. 1, Ch. 265, L. 1967.

Amendments

The 1963 amendment increased the maximum salary of the state liquor administrator from \$7,000 to \$9,000 and that of the assistant state liquor administrator from \$5,600 to \$7,200; changed the chief accountant's title to supervisor of the accounting department and increased his maximum salary from \$5,500 to \$6,600; changed the I. B. M. office superintendent's title to supervisor of the data processing department and increased his maximum salary from \$4,900 to \$6,600; inserted provisions for salaries of the supervisor of the license department, the supervisor of the warehouse department, the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors, and field inspectors; and increased the maximum salaries of vendors in Class A stores from \$4,700 to \$5,875, those of assistant vendors in Class A stores from \$4,200 to \$5,250, those of other employees of Class A stores from \$3,960 to \$4,950, those of vendors in Class B stores from \$4,000 to \$5,000, those of assistant vendors and other employees in Class B stores from \$3,300 to \$4,125, those of vendors in

Class C stores from \$3,600 to \$4,500, those of assistant vendors and other employees of Class C stores from \$3,000 to \$3,750, and those of other employees of the board from \$4,800 to \$6,000.

The 1967 amendment increased the maximum salary of the state liquor administrator from \$9,000 to \$11,500, and the assistant state liquor administrator from \$7,200 to \$10,000; inserted "the salary of the supervisor of the accounting department not exceeding nine thousand dollars (\$9,000) per annum" before "the salaries of the supervisors"; deleted "of the accounting department" before "data processing department"; increased the maximum salary of the data processing and license departments supervisors from \$6,600 to \$7,500, the maximum salary of the supervisor of the warehouse department from \$6,000 to \$7,000, the maximum salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors from \$5,760 to \$6,600, the maximum salary of a vendor of a "Class A" store from \$5,875 to \$6,600; the maximum salary of the assistant vendor of a "Class A" store from \$5,250 to \$5,750; the maximum salary of any other employee of a "Class A" store from \$4,950 to \$5,400; the maximum salary of a vendor of a "Class B" store from \$5,000 to \$5,500; the maximum salary of an assistant vendor and any other employee of a "Class B" store from \$4,125 to

\$4,535; the maximum salary of a vendor of a "Class C" store from \$4,500 to \$4,900, the maximum salary of an assistant vendor and any other employee of a "Class C" store from \$3,750 to \$4,000, and the maximum salary of any other employee of the board from \$6,000 to \$6,600.

Repealing Clause

Section 3 of Ch. 151, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 4 of Ch. 151, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Section 2 of Ch. 265, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

4-110. (2815.65) **State liquor administrator—oath.** The state liquor administrator, before entering upon the performance of his duties, shall take and file the constitutional oath of office and he shall devote his whole time and attention to the administration of the State Liquor Control Act of Montana and the Montana Beer Act and shall receive no other compensation from any source whatsoever, or follow no other occupation.

History: En. Sec. 6, Ch. 105, L. 1933; amd. Sec. 2, Ch. 30, L. 1937; amd. Sec. 12, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted "and he shall give bond in such sum as the board may determine" after "constitutional oath of office."

4-112. (2815.67) **Functions, powers and duties of board.** The board shall have the following functions, duties and powers:

- (a) to (c). * * * [Same as parent volume.]
- (d). * * * [Same as (e) in parent volume.]
- (e). * * * [Same as (f) in parent volume.]
- (f). * * * [Same as (g) in parent volume.]
- (g). * * * [Same as (i) in parent volume.]
- (h). * * * [Same as (j) in parent volume.]
- (i). * * * [Same as (k) in parent volume.]

History: En. Sec. 8, Ch. 105, L. 1933; amd. Sec. 3, Ch. 154, L. 1965.

"To appoint officials to issue and grant permits under this act"; and appropriately redesignated the succeeding paragraphs.

Amendment

The 1965 amendment deleted a paragraph (d) which read, "To grant, refuse or cancel permits for the purchase of liquor" and a paragraph (h) which read,

References

Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-113. (2815.68) **Regulations may be made by board—scope of regulations.** (1). * * * [Same as parent volume.]

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the board to make regulations in the manner set out in that subsection shall extend to and include the following:

- (a) to (f). * * * [Same as parent volume.]
- (g) Prescribing an official serially numbered seal which shall be attached to every package of liquor sold or sealed under this act;
- (h). * * * [Same as parent volume.]
- (i). * * * [Same as (j) in parent volume.]

(j) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

- (k). * * * [Same as (l) in parent volume.]
- (l). * * * [Same as (n) in parent volume.]
- (m). * * * [Same as (o) in parent volume.]
- (n). * * * [Same as (p) in parent volume.]
- (o). * * * [Same as (q) in parent volume.]
- (p). * * * [Same as (r) in parent volume.]
- (q). * * * [Same as (s) in parent volume.]
- (r). * * * [Same as (t) in parent volume.]
- (s). * * * [Same as (u) in parent volume.]
- (3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 105, L. 1933; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by ch. 43 and once by ch. 154. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 43, Laws of 1965, substituted "an official serially numbered seal which shall be attached" in paragraph (2)(g) for "an official seal and official labels and determining the manner in which such

seal or label shall be attached"; and deleted from the end of paragraph (2)(g) the words "including the prescribing of different official seals or different official labels for different classes, varieties and brands of liquor."

Chapter 154, Laws of 1965, deleted former paragraphs (i) and (m) of subsection (2), for text of which see parent volume; appropriately redesignated the succeeding paragraphs of subsection (2); and deleted "by the holders of permits" after "purchase of liquor" in present paragraph (2) (j) (former paragraph (2) (k)).

References

Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-116. (2815.71) Provisions concerning sale of liquor and beer by vendors. (1) A vendor may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder.

(2) Before the vendor shall make delivery of any liquor, other than beer, sold pursuant to this section, he shall—

(a) have first received an order in writing, dated and signed by the purchaser, setting out the kind and quantity of the liquor ordered; and

(b) have been paid the purchase price in cash.

(3) A vendor may, in accordance with this act, and the regulations made thereunder, sell and deliver beer provided that no delivery of beer sold under the provisions of this section shall take place until the purchaser has paid for the same in the manner prescribed in the regulations under this act.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "who is the holder of a subsisting permit" after "sell to any person" in subsection (1); deleted "under such permit" after "en-

titled to purchase" in subsection (1); deleted "the number of his permit and" after "setting out" in paragraph (2) (a); deleted a paragraph (2) (b) reading, "have received from the purchaser his permit and shall have endorsed thereon the kind and quantity of the liquor sold and the date of sale; and"; and deleted

“who is the holder of a subsisting permit entitling him to purchase beer under this act, and to a licensee who is the holder of a subsisting license under this act to keep and sell beer” after “deliver beer to any person” in subsection (3).

4-123 to 4-132. (2815.77 to 2815.86) Repealed.

Repeal

These sections (Secs. 18 to 27, Ch. 105, L. 1933; Sec. 1, Ch. 3, L. 1937; Sec. 1, Ch. 112, L. 1955), relating to permits for the purchase of liquor, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-134. (2815.88) Druggist allowed liquor—sale of liquor by druggist, when authorized. Any druggist may have in his possession alcohol purchased by him pursuant to this act; such alcohol to be used solely in connection with the business of the druggist in compounding medicines or as a solvent or preservative.

Provided that in a municipality where there is no state liquor store a druggist may keep for sale and may sell for strictly medicinal purposes liquor purchased by him pursuant to this act, but no sale of liquor shall be made by such last mentioned druggist except upon a bona fide prescription signed by a physician and no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 29, Ch. 105, L. 1933; amd. Sec. 5, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted “under a special permit” after “alcohol purchased by him” in the first paragraph and again after “liquor purchased by him” in the second paragraph; and made a minor change in punctuation.

4-136. (2815.90) Physician allowed liquor — restrictions — violations. (1) Any physician who deems liquor necessary for the health of a patient of his whom he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician shall administer only such liquor as was purchased by him pursuant to this act, and may charge for the liquor so administered; but no prescription shall be given nor shall liquor be administered by a physician except to a bona fide patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary.

(2). * * * [Same as parent volume.]

History: En. Sec. 31, Ch. 105, L. 1933; amd. Sec. 6, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted “under special permit” after “was purchased by him” in subsection (1).

4-137. (2815.91) Dentist allowed liquor — restrictions — violations. Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him pursuant to this act, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to a bona fide patient in case of actual need, and every dentist who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 32, Ch. 105, L. 1933;
amd. Sec. 7, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "under special permit" after "liquor purchased by him."

4-138. (2815.92) Liquor allowed veterinary—restrictions—violations.
Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary shall administer or cause to be administered liquor purchased by him pursuant to this act, and may charge for the liquor so administered or caused to be administered; but no veterinary shall give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offense against this act.

History: En. Sec. 33, Ch. 105, L. 1933;
amd. Sec. 8, Ch. 154, L. 1965.

special permit" after "liquor purchased by him" in the first part of the section; and deleted "himself consume, nor shall he" after "no veterinary shall" in the latter part of the section.

Amendment

The 1965 amendment deleted "under

4-139. (2815.93) Hospitals and sanitariums—restrictions—violations.
Any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer liquor purchased by him to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 34, Ch. 105, L. 1933;
amd. Sec. 9, Ch. 154, L. 1965.

holds a special permit under this act for that purpose" before "administer liquor purchased by him"; and deleted "under his special permit" after "administer liquor purchased by him."

Amendment

The 1965 amendment deleted "if he

4-140. (2815.94) Application of act. (1) Nothing in this act shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state liquor control board may make such regulations as the

board deem necessary with respect thereto, not inconsistent with this act, or with the statutes of the United States of America or regulations issued under the provisions of the federal alcohol administration act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through section 5693, inclusive.

(2). * * * [Same as parent volume.]

History: En. Sec. 35, Ch. 105, L. 1933; amd. Sec. 1, Ch. 67, L. 1965.

Amendment

The 1965 amendment added the second paragraph to subsection (1).

Repealing Clause

Section 2 of Ch. 67, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 67, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Purchase of Materials

The 1965 amendment to this section

indicates that materials to be used in the manufacture of liquor are not required to be purchased through the liquor control board, but may be purchased in any manner not inconsistent with the laws and regulations of the federal government. *Alpha Industries, Inc. v. Montana Liquor Control Board*, 146 M 23, 403 P 2d 606.

Scope

The 1965 amendment to this section made it clearly permissible to engage in the manufacture of liquor in Montana provided such business is also authorized by the statutes of the United States of America. *Alpha Industries, Inc. v. Montana Liquor Control Board*, 146 M 23, 403 P 2d 606.

4-150. (2815.104) Sale of liquor unlawful, when, etc.

References

Alpha Industries, Inc. v. Montana

Liquor Control Board, 146 M 23, 403 P 2d 606.

4-153. (2815.107) Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration. (1) to (3). * * * [Same as parent volume.]

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of quality determination. The board shall maintain written records of all samples received; such records shall show the brand name, amount, from whom received, and the name of the person to whom the sample was delivered or other final disposition.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965.

Amendment

The 1965 amendment added subsection (4).

4-157. (2815.111) Repealed.

Repeal

This section (Sec. 52, Ch. 105, L. 1933) prohibiting the consumption of liquor ex-

cept from an officially sealed package purchased under permit, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-159. (2815.113) Persons not to consume liquor or be intoxicated in public places. (1) Except in the case of liquor purchased and consumed in accordance with the beer license or a special license for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place.

(2) No person shall be in an intoxicated condition in a public place.

History: En. Sec. 54, Ch. 105, L. 1933; amd. Sec. 10, Ch. 154, L. 1965.

Amendment

The 1965 amendment substituted "special license" for "special permit" in subsection (1).

4-162. (2815.116) Repealed.

Repeal

This section (Sec. 57, Ch. 105, L. 1933), prohibiting the supply of liquor to a per-

Liability of Tavern Keeper

Subd. (2) of this section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

son whose permit has been suspended or cancelled, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-164. (2815.118) Interdicted persons—presence on liquor store or beer licensee's premises forbidden. Any interdicted person who enters or is found upon the premises of any state liquor store, or the premises for which a beer license has been granted, shall be guilty of an offense against this act.

History: En. Sec. 59, Ch. 105, L. 1933; amd. Sec. 11, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "No permit shall be issued to any interdicted per-

son, and" at the beginning of the section; substituted "Any" for "every" at the beginning of the section; and deleted "who makes application for a permit, or" after "interdicted person."

4-165, 4-166. (2815.119, 2815.120) Repealed.

Repeal

These sections (Secs. 60, 61, Ch. 105, L. 1933), relating to permit applications and liquor purchases by persons whose

permits have been suspended or cancelled, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-167. (2815.121) Drunkenness when and where, etc.

Civil Liability

This section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated

patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

4-168. (2815.122) Repealed.

Repeal

This section (Sec. 63, Ch. 105, L. 1933), relating to the possession and use of liquor

by permit holders or persons not holding permits, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-172. Bottle clubs prohibited. The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation or association. A bottle club is hereby defined as any person, persons, partnership, firm, corporation or association maintaining premises, not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963.

Title of Act

An act to prohibit any person, persons, partnership, firm, corporation or associa-

tion from operating a beer, liquor or other alcoholic beverage, bottle club, and providing a penalty therefor; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

Amendment

The 1963 amendment made a minor change in phraseology in the first sentence and added the second sentence.

Repealing Clause

Section 2 of Ch. 109, Laws 1963 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 109, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

4-173. Violation—penalty—abatement as nuisance. A violation of this act shall be deemed a nuisance and may be abated, and any person, persons, partnership, firm, corporation or association found guilty of violating this section shall be punished by fine of not more than five hundred dollars (\$500.00), or by six (6) months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 200, L. 1959.

Effective Date

Repealing Clause

Section 3 of Ch. 200, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 200, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

**CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)—
INTERDICTION AND OTHER ENFORCEMENT PROVISIONS—
FINANCE—MISCELLANEOUS**

Section 4-201. Interdiction—order of—effect—disposal of liquor of interdicted person.

4-202. Filing of order of interdiction.

4-229. Disposition of money received.

4-230. When balance sheet and profit and loss statement to be made.

4-234. Officers may administer oaths.

4-201. (2815.126) Interdiction—order of—effect—disposal of liquor of interdicted person. (1) Where it is made to appear to the satisfaction of any court that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the board.

(2). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 105, L. 1933; amd. Sec. 12, Ch. 154, L. 1965.

that person, and” after “make an order of interdiction” in subsection (1).

Amendment

The 1965 amendment deleted “directing the cancellation of any permit held by

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-202. (2815.127) Filing of order of interdiction. Upon receipt of the order of interdiction, the board shall notify the interdicted person and all vendors, and such other persons as may be provided by the regulations, of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person.

History: En. Sec. 68, Ch. 105, L. 1933; amd. Sec. 13, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted “cancel any permit held by the interdicted person,

and shall" after "the board shall"; and deleted "of the cancellation of the permit, and" after "provided by the regulations."

References

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-203. (2815.128) Revocation of order of interdiction—restoration, etc.

References

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-204. (2815.129) Application and setting aside order, etc.

References

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-205. (2815.130) Penalty for violations of act.

Jurisdiction of Prosecutions

The provisions of the retail liquor license act (sections 4-401 to 4-441) control with respect to prosecution of a licensee for making a sale to an interdicted person

and a justice court had jurisdiction to act upon a complaint charging defendant with a sale of liquor to an interdicted person. *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-229. (2815.154) **Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board. The board is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores. The board shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores.

History: En. Sec. 94, Ch. 105, L. 1933; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

4-230. (2815.155) **When balance sheet and profit and loss statement to be made.** The accounts of the board shall be made up for the fiscal year ending June 30 in each year. In every case the board shall prepare a balance sheet and statement of profit and loss and submit the same to the state controller.

History: En. Sec. 95, Ch. 105, L. 1933; amd. Sec. 2, Ch. 86, L. 1949; amd. Sec. 21, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "Effec-

tive July 1, 1949" at the beginning of the section; deleted "and at such other times as may be required by the state examiner; and" at the end of the first sentence; and substituted "controller" for "examiner" at the end of the section.

4-231. (2815.156) Repealed.

Repeal

This section (Sec. 96, Ch. 105, L. 1933), relating to a reserve fund to be created

from the profits, was repealed by Sec. 242, Ch. 147, Laws 1963.

4-233. (2815.159) Intent and construction of act.**References**

Alpha Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

4-234. (2815.160) Officers may administer oaths. Every vendor may administer any oath and take and receive any affidavit or declaration required under this act or the regulations.

History: En. Sec. 100, Ch. 105, L. 1933;
amd. Sec. 14, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "and every official authorized by the board to issue permits under this act" after "Every vendor."

4-240. License tax on liquor—amount—distribution of proceeds.**Items Taxed**

License and excise taxes are due and collectible only upon liquor purchased by the liquor control board at the time of sale and delivery to the board, and are not due and collectible upon materials, products and distilled spirits containing alcohol for manufacturing purposes. Alpha

Industries, Inc. v. Montana Liquor Control Board, 146 M 23, 403 P 2d 606.

References

Cited in Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116; State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section 4-303. Closing hours for licensed retail beer establishments.

- 4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
- 4-318. Wholesalers' licenses—application for and issuance—sub-warehouse—imported beer handled through warehouse or sub-warehouse.
- 4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.
- 4-329. Sale of beer by retailer for consumption off premises.
- 4-332. Special permits to sell beer—application and issuance—fee.
- 4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.
- 4-341. Fees for licenses—expiration dates—regulation by cities and towns.
- 4-347. Revenue to be paid to state treasurer—disposition of revenue.
- 4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

- (a) Sunday from two A. M. to one P. M.;
- (b) On any other day between two A. M. and eight A. M.;
- (c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the times such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959.

words "election at which state and national officers are elected"; inserted the words "but not upon the day of any other election" and deleted a provision calling for the closing of establishments at special bond elections.

Amendment

The 1959 amendment in subd. (c) inserted the word "biennial"; inserted the

4-307. (2815.12) Powers of board to make and enforce regulations.

References

Skaggs Drug Centers v. Montana

Liquor Control Board, 146 M 115, 404 P 2d 511.

4-310. (2815.15) Applications for sale or manufacture of beer, etc.

References

Skaggs Drug Centers v. Montana

Liquor Control Board, 146 M 115, 404 P 2d 511.

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 and upon presenting satisfactory evidence to the board as required by section 4-310, shall be licensed by the board in accordance with the provisions of this act and such regulations as may be prescribed by the board, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341, a tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959.

Amendment

The 1959 amendment increased the barrelage tax from \$1.00 to \$1.50 per barrel.

4-317.1. Right of brewers to maintain and operate storage depots, etc.

References

Alpha Industries, Inc. v. Montana

Liquor Control Board, 146 M 23, 403 P 2d 606.

4-318. (2815.23) Wholesalers' licenses—application for and issuance—sub-warehouse—imported beer handled through warehouse or sub-warehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act shall apply to the board for a license to do so and tender with his application the license fee hereinafter provided for and the board is hereby empowered, authorized and directed to issue one [1] wholesale license for every thirty (30) retail beer licenses figured on

the number of retail beer licenses issued in the state to qualified applicants in accordance with the provisions of this act; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall have been a resident of Montana for a period of five (5) years immediately prior to making application, or if said applicant is a Montana corporation said corporation shall have been organized for a period of five (5) years immediately prior to making application; provided, however, an individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall have been authorized to do business in Montana for a period of five (5) years immediately prior to making application; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) sub-warehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said sub-warehouse; licenses already issued which are in excess of said limitations and which are of issue on the date of the passage and approval of this act, shall be renewable, but no new wholesale beer licenses shall be issued until the number of licenses shall be reduced to within the above limitation.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or sub-warehouse in Montana; said wholesaler shall distribute said beer from such warehouse or sub-warehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the board; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the board and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965.

Amendment

The 1965 amendment inserted in the first sentence of the second paragraph the proviso reading, "provided, however, an individual or partnership which has been licensed as a beer wholesaler may, upon

incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership."

Repealing Clause

Section 2 of Ch. 222, Laws 1965 repealed all acts and parts of acts in conflict therewith.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959.

Repealing Clause

Section 3 of Ch. 135, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment increased the bar-
relage tax from \$1.00 to \$1.50 per barrel.

Effective Date

Section 4 of Ch. 135, Laws 1959 read
"This act shall be in full force and effect
from and after May 1st, 1959."

4-327. (2815.30) Retailers' license—application and issuance, etc.

Qualifications for License

Montana liquor control board was not
empowered by the terms of the Montana
Beer Act (4-301 to 4-358) to establish
the policy that grocery stores are the
only "fit and proper person, firm or cor-

poration to sell beer" and thereby deny
a corporation operating a chain of drug-
stores a license to sell retail beer for
off-premise consumption. *Skaggs Drug
Centers v. Montana Liquor Control
Board*, 146 M 115, 404 P 2d 511.

4-329. (2815.32) Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933;
amd. Sec. 10, Ch. 46, Ex. L. 1933; amd.
Sec. 1, Ch. 177, L. 1961.

Repealing Clause

Section 2 of Ch. 177, Laws 1961 re-
pealed all acts and parts of acts in conflict
therewith.

Amendment

The 1961 amendment at end of section
deleted the words "and in quantities not
to exceed five (5) gallons."

4-330. (2815.33) Purchase of beer by retailer—persons, etc.

References

Skaggs Drug Centers v. Montana

Liquor Control Board, 146 M 115, 404
P 2d 511.

4-332. (2815.35) Special permits to sell beer—application and issuance—fee. (1) Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will

be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of ten dollars (\$10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars (\$25.00), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of five dollars (\$5.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L.
1933; amd. Sec. 1, Ch. 235, L. 1963.

Amendment

The 1963 amendment designated the previous text as subsection (1) and added subsection (2).

4-333. (2815.36) Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation. (1)(a) and (b). * * *
[Same as parent volume.]

(2) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the board may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact

of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965.

Amendments

The 1959 amendment added the proviso at the end of subsection (3).

The 1965 amendment added "and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy" at the end of the first sentence of subsection (2).

Saving Clause

Section 2 of Ch. 271, Laws 1965 read "Retail licenses to sell beer in the original packages for off-premise consumption of issue on the date of passage and approval of this act shall be renewable, but no new licenses shall be issued except as provided by this act."

Repealing Clause

Section 2 of Ch. 205, Laws 1959, re-

pealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 205, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

Section 3 of Ch. 271, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Qualifications for License

Montana liquor control board was not empowered by the terms of the Montana Beer Act (4-301 to 4-358) to establish the policy that grocery stores are the only "fit and proper person, firm or corporation to sell beer" and thereby deny a corporation operating a chain of drug-stores a license to sell retail beer for off-premise consumption. *Skaggs Drug Centers v. Montana Liquor Control Board*, 146 M 115, 404 P 2d 511.

4-339. (2815.42) Qualifications of waiters to serve beer.

References

Skaggs Drug Centers v. Montana

Liquor Control Board, 146 M 115, 404 P 2d 511.

4-341. (2815.44) Fees for licenses — expiration dates — regulation by cities and towns. Each licensee, under the provisions of this act, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00);

Each "wholesaler" four hundred dollars (\$400.00);

Each "retailer" two hundred dollars (\$200.00);

Any unit of a nationally chartered veterans organization fifty dollars (\$50.00);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars (\$25.00).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana liquor control board with the consent of the said board provided that said transferee shall qualify under this act.

The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana liquor control board based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana liquor control board; the cities and towns may also impose a fee on a licensee of the board for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state. This act shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the Montana beer act which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or sub-warehouse in Montana.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963.

not affect the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 122, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Pre-emption

Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor since the state has exclusive authority in that matter, so that where defendant was charged with selling beer to a minor, city police court had no jurisdiction to try the offense and it had to be brought either in the justice of the peace court or in the district court. State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

Amendment

The 1963 amendment substituted the words "wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00)" for the words "seven hundred fifty dollars (\$750.00)" in the first paragraph; and added the fourth sentence to the second paragraph.

Separability Clause

Section 2 of Ch. 122, Laws 1963 read "If any word, phrase, clause, figure, sentence, subdivision, or section of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall

4-342. (2815.45) Denial of application for license or renewal, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Review of Agency Action

The principal reason for the enactment of this section was to afford to any person, original applicant or otherwise, ap-

pearing before the liquor control board, the right to have the agency's actions reviewed judicially for abuse of discretion, e.g., actions not in conformity to the law and arbitrary and tyrannical action. Skaggs Drug Centers v. Montana Liquor Control Board, 146 M 115, 404 P 2d 511.

4-344. (2815.47) Jurisdiction of courts.

References

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

4-347. (2815.50) Revenue to be paid to state treasurer—disposition of revenue. All fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana beer act shall be paid over to the state treasurer on or before the tenth day of

each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "and the state examiner shall annually audit the books of the board in order to determine that the amount of money received as shown by the books of the board correspond with the books of the state treasurer" at the end of the section.

4-349. (2815.51) Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially. (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15.00) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trademark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and

in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefore within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967.

"in area" in subdivision 3 of subsection (a).

Amendments

The 1959 amendment added the last sentence to subd. (b).

The 1967 amendment substituted "six hundred thirty (630)" for "three hundred (300)" and deleted "and both not in excess of fifty dollars (\$50.00) in value, exclusive of installation charges" after

Repealing Clause

Section 2 of Ch. 110, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 49, Laws 1967 read "This act shall be effective on January 1, 1968."

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.

4-407.1 Notice of application—publication—protest.

4-409.1. Special permits to sell liquor—application and issuance—fee.

4-414. Hours for sale of liquor.

4-401. Declaration of policy as to retail sale of liquor.

Pre-emption

Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor since the state has adopted exclusive control of that function, so that where defendant was charged with selling beer to a minor, city police court had no jurisdiction to try the offense and it had to be brought either in the justice of the peace court

or in the district court. State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

References

Cited in Gill v. Rafn, 133 M 505, 326 P 2d 974; State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906; Beard v. McCormick, — M —, 411 P 2d 964.

4-402. Definitions.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to-wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963.

Amendments

The 1959 amendment added the proviso at the end of subd. (2).

The 1963 amendment reduced the number of retail liquor licenses authorized in places of over 1,000 population, as specified in the first sentence of paragraph (1) (a) (for previous text, see parent volume); inserted "(as to ownership only)" in the proviso to the fourth sentence in paragraph (1) (a); deleted the words "or for use at premises situated within any unincorporated town" which followed "corporate limits thereof" in paragraph (1) (b); substituted "not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and

incorporated towns in such county" at the end of paragraph (1) (b) for "as determined by the board in its sound discretion"; and deleted from the end of paragraph (1) (b) a proviso reading, "provided that no retail liquor license shall be issued for any premises so situated unless the board shall find that the issuance of such license is required by public convenience and necessity."

Repealing Clause

Section 2 of Ch. 206, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 206, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

References

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

4-407. Application for license—penalty for false statements.

References

Cited in State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979.

4-407.1. Notice of application—publication—protest. When an application has been filed with the Montana liquor control board for a license to sell liquor at retail, or to transfer such license, the board shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has

made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time stated in the notice, which shall be at a special or regular meeting of the Montana liquor control board in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL LIQUOR LICENSE

Notice is hereby given that on the _____ day of _____, 19__, one (name of applicant) filed an application for a retail liquor license with the Montana liquor control board, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the _____ day of _____, 19__, at the office of the Montana liquor control board in Helena, Montana.

Dated _____

Signed _____

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this act be issued if the said Montana liquor control board shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the Montana retail liquor license act will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana liquor control board, an amount sufficient to cover the costs of publishing said notice.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965.

Amendment

The 1965 amendment deleted "as provided in chapter four (4) of volume one (1), of the Revised Codes of Montana of 1947" after "or to transfer such license"

in the first sentence of the preliminary paragraph; substituted "the board shall promptly publish" in the first sentence of the preliminary paragraph for "it shall be the duty of said board to promptly publish once a week for four (4) consecutive weeks"; and inserted the second and third sentences in the preliminary paragraph.

4-409.1. Special permits to sell liquor—application and issuance—fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell liquor at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars (\$10.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.

History: En. Sec. 2, Ch. 235, L. 1963.

4-410. Contents of license—posting—privilege—transfer—expiration.

Assignment of License

Where plaintiffs rented premises and allowed defendant to use their liquor license under a home-made lease, liquor license was not transferred to defendant at the expiration of the lease since plain-

tiffs had renewed the license themselves, and it was inconceivable that they would have sold license worth \$10,000 to another for rent amounting to \$3,000 over a five-year period. *Beard v. McCormick*, — M —, 411 P 2d 964.

4-412. Persons disqualified for license.

References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 979.

4-413. Persons to whom liquor may not be sold or given.

Jurisdiction of Prosecutions

With respect to the prosecution of a licensee for the sale of liquor to an interdicted person, the provisions of this chapter control over the provisions of the

liquor control act (sections 4-201 to 4-241) and a justice court had jurisdiction over such a prosecution. *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959.

Amendment

The 1959 amendment inserted the word "biennial"; inserted the phrase "at which state and national officers are elected" and substituted the phrase "but not upon the day of any other election; provided however" for the words "excepting bond elections."

Repealing Clause

Section 3 of Ch. 162, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 162, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

References

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

4-417. Excise liquor tax—collection.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1,

Ch. 180, L. 1957. Approved at Referendum, Nov. 4, 1958.

Compiler's Note

This section was submitted to the qualified electors of the state of Montana and approved by them on November 4, 1958, effective under Governor's proclamation of November 28, 1958 from and after the date of proclamation. The section as approved is set out in the parent volume.

Items Taxed

License and excise taxes are due and collectible only upon liquor purchased by the liquor control board at the time of sale and delivery to the board, and are not due and collectible upon materials, products and distilled spirits containing alcohol for manufacturing purposes. *Alpha Industries, Inc. v. Montana Liquor Control Board*, 146 M 23, 403 P 2d 606.

4-420. Penalty for sale of alcoholic liquor without license.**Title Defect Cured**

Since chapter 84 of the 1937 Session Laws was incorporated without reference to the original title in the Revised Codes of Montana 1947, as this section, and the Revised Codes of Montana 1947 were approved, legalized and adopted by the legislature

by the provisions of chapter 4 of the Laws of 1951 which now appear as section 12-330, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

4-425. Denial of application for license or renewal—suspension, etc.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

License Issued under Mandate

Where, after stay of execution was denied, the liquor control board did not apply for supersedeas from the supreme

court but issued a license in compliance with a district court mandate, the question whether the mandate was proper did not present a justiciable controversy for the supreme court, even under section 93-8024. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

4-430. City and county licenses—fees.**References**

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

4-439. Penalty for violating act—revocation of license.**References**

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

CHAPTER 5—IDENTIFICATION CARDS

Section 4-501. Definitions.

4-502. Identification card—form.

4-501. Definitions. As used in this act the term

(a) to (d). * * * [Same as parent volume.]

(e). [Deleted.]

History: En. Sec. 1, Ch. 107, L. 1955; amd. Sec. 15, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted a paragraph (e), for text of which see parent volume.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least twenty-one (21) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No. _____; Issued at _____ Date _____
 Birth Certificate issued at _____; Date of birth _____
 Draft Card issued at _____; Date of birth _____
 Discharge Papers: Service _____; Issued at _____;
 Date of birth _____.

Military Identification Card or Pass: Service _____;
 Issued at _____ Date _____ Age Shown _____
 Driver's License: Date _____; Issued at _____;
 Age Shown _____.

I hereby represent to _____ that I am over the age of twenty-one (21) years, having been born on the _____ day of _____, 19__, at _____, and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) _____ (Signature) _____
 (Address) _____ (Address) _____

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955;
 amd. Sec. 16, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted from the form lines following the preliminary paragraph therein and reading, "— Fill in the Following — Montana Liquor Permit No. —; Issued at —."

Repealing Clause

Section 17 of Ch. 154, Laws 1965 read "Sections 4-157, 4-162, 4-165, 4-166, 4-168, 4-511, and sections 4-123 through 4-132, R. C. M. 1947, are repealed."

4-511. Repealed.

Repeal

This section (Sec. 6, Ch. 190, L. 1957), prohibiting the issuance of liquor permits

to persons under 21 years of age, was repealed by Sec. 17, Ch. 154, Laws 1965.

TITLE 5—BANKS AND BANKING

- Chapter 2. Organization and incorporation of banks, 5-201, 5-206, 5-217.
5. Miscellaneous regulatory provisions, 5-506, 5-528, 5-532.
6. State banking department—state examiner ex-officio superintendent of banks, 5-602, 5-603.
8. Impairment of capital—insolvency, 5-803.
9. Examination and supervision—state examiner's fund, 5-904 to 5-910.
10. General powers and limitations of banks, 5-1001, 5-1028.
11. Closing and liquidation of banks, 5-1114, 5-1117, 5-1130.

CHAPTER 1—THE BANK ACT—DEFINITION OF TERMS

5-101. (6014.1) Citation of act—application of provisions, etc.

Cross-References

Exemption of state banks from corporation license tax, sec. 84-1501.4.

5-102. (6014.2) Institutions to which act is applicable.

Effect of Incorporation

A corporation which pursuant to sections 5-202 and 5-203 applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank no later than April 30, 1956, the date on which the application was granted by the superintendent al-

though it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423.

5-104. (6014.4) Commercial bank defined.

References

Cited in First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

- Section 5-201. Organization and incorporation—articles of agreement.
5-206. Amount of capital.
5-217. Change in number of directors—procedure—approval by superintendent of banks.

5-201. (6014.10) Organization and incorporation—articles of agreement. Any three or more persons, desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this act, shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement, which shall set forth:

1 to 4. * * * [Same as parent volume.]

5. The number of the board of directors, and the names of those agreed upon for the first year and the articles may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two (2), within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

6. * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 89, L. 1927;
amd. Sec. 1, Ch. 7, L. 1965.

Amendment

The 1965 amendment added to subd. 5 all of the language following "those agreed upon for the first year."

5-202. Presentation of articles to superintendent of banks, etc.

Creation of Bank

When the superintendent of banks issued a certificate of authority for the establishment of a bank, the capital having been previously paid in, the organization became a state bank within the meaning of the Bank Holding Company Act of 1956 (U. S. C., tit. 12, secs. 1841 to 1848), even though it did not actually commence business until some time later. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 423, affirmed in 306 F 2d 937.

Effect of Incorporation

A corporation which applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank, as defined in section 5-102, no later than April 30, 1956, the date on which the application was granted by the superintendent although it did not commence a banking business until November 1, 1960. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 940.

5-203. Superintendent of banks to approve or refuse, etc.

Approval of Application

A corporation which applies to the Montana superintendent of banks for an authorization becomes a bank when the

application is granted by the superintendent. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 940.

5-206. (6014.12) Amount of capital. The amount of the common and preferred stock of a commercial bank shall not be less than twenty-five thousand dollars (\$25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

That a commercial bank having its place of business in a city or town of more than two thousand (2,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty thousand dollars (\$30,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than fifty thousand dollars (\$50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars (\$100,000) nor more than ten million dollars (\$10,000,000), of which amount at least one hundred thousand dollars (\$100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine.

The shares of the common capital stock of all banks shall have a par value of one hundred dollars (\$100) or such less amount as may be provided in the articles of incorporation; provided that this act shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; amd. Sec. 1, Ch. 45, L. 1963. in the articles of incorporation" in the last sentence of the section.

Amendment

The 1963 amendment inserted the words "or such less amount as may be provided

References

Cited in *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 939.

5-207. (6014.13) Calling of first meeting.

Commencement of Business

A corporation did not cease to be a bank because it did not commence business within one year from the date of its incorporation as required by section 15-808 where the superintendent of banks did not cancel his certificate of authorization, as authorized by this section, but continued to recognize the corporation as a bank. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

Failure to Commence Business

The provisions of section 15-808 for automatic cessation of corporate powers if a corporation does not commence business within one year from the date of its incorporation are in direct conflict with this section, so do not apply to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 424, affirmed in 306 F 2d 937.

5-217. (6014.23) Change in number of directors—procedure—approval by superintendent of banks. Any state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company, provided that the number of directors shall not at any time be less than three or more than eleven.

Whenever any bank or trust company shall decide to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at such meeting under the articles of incorporation or amendments thereto, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of such meeting, and in addition, said notice must be published once a week for two consecutive weeks in a newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in the county it shall not be necessary to publish said notice; provided, however, that the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice thereof.

If at the time and place specified in the notice of such special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation shall appear in person or by proxy and vote in favor of such amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the superintendent of banks, who shall within thirty days after the receipt thereof either approve or reject the amendment. The action of the superintendent of banks on said amendment shall be final. If he approves the same, he shall notify the bank, whereupon the certificate with the superintendent's approval attached thereto shall be filed in the office of the county clerk and recorder of the county wherein the bank is situated, and a certified copy thereof shall be filed in the office of the secretary of state. Upon the filing of such certified copy with the secretary of state, the amendment shall become effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965.

Amendment

The 1965 amendment inserted in the first paragraph the words "or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and

also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders"; and substituted "the amendment relative to the number of directors" for "the number to which the board of directors has been increased or diminished" in the first sentence of the third paragraph.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section 5-506. Limitation on real estate loans.

5-528. Joint deposits—survivorship.

5-532. Reserve requirements.

5-506. (6014.31) Limitation on real estate loans. Any commercial bank organized under the laws of the state of Montana may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. Provided that, the amount of any such loan hereafter made shall not exceed fifty per centum (50%) of the appraised value of the real estate offered as security, and no such loan shall be made for a longer period than five (5) years, except that:

(1) Any such loan may be made in an amount not to exceed sixty per centum (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if such loan is secured by an amortized mortgage, deed of trust or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum (40%) or more of the principal of the loan within a period of not more than twenty (20) years; and

(2) No such commercial bank shall make such loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired

plus the amount of its unimpaired surplus or in excess of sixty per centum (60%) of the amount of its time and saving deposits, whichever is the greater.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this act, but shall be classed as ordinary commercial loans, provided that no commercial bank shall invest in or be liable on any such loans in an aggregate amount in excess of fifty per centum (50%) of its actually paid in and unimpaired capital.

Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment shall have been made by a federal reserve bank or in which the Reconstruction Finance Corporation cooperated or purchases a participation in, shall not be subject to the restrictions or limitations of this act upon loans secured by real estate, provided any commercial bank in this state shall from time to time have the same authority to make loans upon real estate as may be given by acts of Congress of the United States or the federal reserve system to national banks or bank members of the federal reserve system.

(3) The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of any act of the Congress of the United States; and said limitations and restrictions shall not apply to the making, extension or renewal of any loans which are made under subchapter II of the act of Congress, known as the servicemen's readjustment act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in sections 5-104 to 5-108 of this code, only.

History: En. Sec. 27, Ch. 89, L. 1927; "twenty (20) years" both times it appeared.
amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959.

Repealing Clause

Section 2 of Ch. 25, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment in subd. (1) increased the term from "ten (10) years" to

5-528. (6014.53) Joint deposits—survivorship. When a deposit has been made, or shall hereafter be made, in any bank transacting business in this state, in the names of two (2) or more persons, payable to either or payable to either or the survivor, or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of said persons, whether the other or others be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

The term deposit shall include certificates of deposit heretofore or hereafter issued.

History: En. Sec. 49, Ch. 89, L. 1927; amd. Sec. 1, Ch. 91, L. 1967.

Amendments

The 1967 amendment inserted "transacting business in this state" after "bank"; inserted "or more" before "persons"; in-

serted "or any survivor" after "survivor"; substituted "or others" for "either" before "of said persons"; inserted "or others" before "be living"; added the last sentence; and made minor changes in punctuation.

5-532. (6014.57) Reserve requirements. Every bank, except a reserve bank, shall maintain at all times a reserve of such percentage of its deposit liabilities as shall be determined by the superintendent of banks as hereinafter provided, of which reserve such portion as the board of directors may determine may be on deposit in banks approved by the superintendent of banks as reserve banks. The superintendent of banks is authorized and empowered to raise or lower and to establish reserves which shall be maintained on demand deposits and on time deposits as in his judgment banking conditions may justify, provided such power to raise or lower and to establish reserves shall be limited to a percentage of such deposits not in excess of reserve requirements which may be established from time to time for banks that are members of the federal reserve system nor less than seventy-five per centum (75%) of reserve requirements which may be established from time to time for banks that are members of the federal reserve system. A bank approved by the superintendent of banks as a reserve bank must at all times maintain a reserve of such percentage or percentages as the superintendent of banks shall determine from time to time, which shall not be less than the percentages hereinbefore specified of its deposit liabilities, of which such portion as the board of directors may determine, may be on deposit in banks approved by the superintendent of banks as reserve banks. Any solvent bank of good repute having a full paid up capital and surplus of three hundred thousand dollars (\$300,000) doing business in the state of Montana, or any of the states of the United States may be designated by the superintendent of banks as a reserve agent for Montana state banking institutions. Such approval or designation may be withdrawn or withheld at any time by the superintendent of banks for cause. Whenever the reserve of any bank shall fall below the amount required herein to be kept, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the superintendent of banks shall notify any bank whose reserve may be below the amount herein required, to make good such reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other

banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried, provided, a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act.

History: En. Sec. 53, Ch. 89, L. 1927; amd. Sec. 1, Ch. 6, L. 1967.

Amendments

The 1967 amendment substituted "such percentages" for "at least ten per centum (10%)" preceding "of its deposit liabilities" and added "as shall be * * * hereinafter provided" after "its deposit liabilities" in the first sentence; added the present second sentence "The superintendent of banks * * * federal reserve system," substituted "such percentage or

percentages * * * hereinbefore specified" for "at least fifteen per centum (15%)" after "maintain a reserve of" in the third sentence; in the fourth sentence increased capital and surplus requirements from \$150,000 to \$300,000; and deleted from the end of the fifth sentence a proviso which read: "provided that the provisions of this act as to capital and surplus shall not apply to any bank in Montana heretofore designated by the superintendent of banks as a reserve bank."

CHAPTER 6—STATE BANKING DEPARTMENT—STATE EXAMINER EX-OFFICIO SUPERINTENDENT OF BANKS

Section 5-602. State superintendent of banks.

5-603. State superintendent of banks—employees.

5-602. (6014.60) State superintendent of banks. The term of office of the superintendent of banks shall be four (4) years from and after his appointment, and it shall be his duty to execute all laws in relation to banks, acting personally or through his examiners, regular or special.

History: En. Sec. 56, Ch. 89, L. 1927; amd. Sec. 45, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second sentence reading, "He shall file a bond as

superintendent of banks in a penal sum of ten thousand dollars with a surety or surerties to be approved by the governor, conditioned upon the faithful performance of the duties of his office as superintendent of banks."

5-603. (6014.61) State superintendent of banks—employees. The superintendent of banks shall have the power and authority with the approval of the governor to appoint such clerk and examiners, both regular and special, one of whom may be designated chief examiner, as may be necessary for the proper transaction of the business of the department. The examiners shall qualify by taking the oath of office required of other state officers and be commissioned by the superintendent of banks as such examiners.

History: En. Sec. 57, Ch. 89, L. 1927; amd. Sec. 13, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted "and giving a bond in the sum of ten thousand

dollars (\$10,000.00), to be approved by the governor, conditioned upon the faithful discharge of the duties of state bank examiners" after "required of other state officers" in the second sentence; and made another minor change.

5-605. (6014.63) Repealed.

Repeal

This section (Sec. 59, Ch. 89, L. 1927), relating to the salaries of the superintend-

ent of banks and of the clerks and bank examiners appointed by him, was repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 8—IMPAIRMENT OF CAPITAL—INSOLVENCY

Section 5-803. Deposits in insolvent bank.

5-803. (6014.74) Deposits in insolvent bank. Except as otherwise provided by the Uniform Commercial Code: Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars (\$10,000.00), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid. [Effective January 1, 1965.]

History: En. Sec. 70, Ch. 89, L. 1927; amd. Sec. 11-102, Ch. 264, L. 1963.

Commercial Code" at the beginning of the section; and made a minor change in phraseology.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

- Section 5-904.** Payments by counties.
5-905. Payments by cities and towns.
5-906. Payments by county free high schools.
5-907. Payments by irrigation districts.
5-908. Payments by banks, investment and trust companies.
5-909. Payments by building and loan associations.
5-910. Special examinations and fees.

5-904. (6014.78) Payments by counties. For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars (\$5,000,000) or less, shall pay one hundred dollars (\$100.00) for each one million dollars (\$1,000,000) of taxable valuation, or fraction thereof;

Counties having a taxable valuation of more than five million dollars (\$5,000,000), but less than twenty million dollars (\$20,000,000), shall pay five hundred dollars (\$500.00), plus seventy-five dollars (\$75.00), for each one million dollars (\$1,000,000) of taxable valuation in excess of five million dollars (\$5,000,000) or fraction thereof;

Counties having a taxable valuation of more than twenty million dollars (\$20,000,000), but less than forty million dollars (\$40,000,000), shall pay sixteen hundred twenty-five dollars (\$1625.00) plus fifty dollars (\$50.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of twenty million dollars (\$20,000,000) or fraction thereof;

Counties having a taxable valuation in excess of forty million dollars (\$40,000,000) shall pay twenty-six hundred twenty-five dollars (\$2625.00) plus twenty-five dollars (\$25.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of forty million dollars (\$40,000,000) or fraction thereof;

The minimum payment hereunder for any one county shall be three hundred fifty dollars (\$350.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953; amd. Sec. 1, Ch. 186, L. 1959. a provision providing for a maximum fee. For section prior to amendment see parent volume.

Amendment

The 1959 amendment generally revised this section changing the fees and deleted

Repealing Clause

Section 2 of Ch. 186, Laws 1959 repealed all acts and parts of acts in conflict therewith.

5-905. (6014.79) Payments by cities and towns. For the credit of such fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars (\$50,000) or less, fifty dollars (\$50);

Cities and towns having a taxable valuation of from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000), sixty-five dollars (\$65);

Cities and towns having a taxable valuation of from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000), eighty dollars (\$80);

Cities and towns having a taxable valuation of from two hundred thousand dollars (\$200,000) to four hundred thousand dollars (\$400,000), one hundred five dollars (\$105);

Cities and towns having a taxable valuation of from four hundred thousand dollars (\$400,000) to six hundred thousand dollars (\$600,000), one hundred thirty dollars (\$130);

Cities and towns having a taxable valuation of from six hundred thousand dollars (\$600,000) to eight hundred thousand dollars (\$800,000), one hundred sixty dollars (\$160);

Cities and towns having a taxable valuation of from eight hundred thousand dollars (\$800,000) to one million dollars (\$1,000,000), two hundred dollars (\$200);

Cities and towns having a taxable valuation of from one million dollars (\$1,000,000) to one million two hundred fifty thousand dollars (\$1,250,000), two hundred forty dollars (\$240);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars (\$1,250,000) to one million five hundred thousand dollars (\$1,500,000), three hundred twenty dollars (\$320);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars (\$1,500,000) to two million dollars (\$2,000,000), four hundred dollars (\$400);

Cities and towns having a taxable valuation of from two million dollars (\$2,000,000) to three million dollars (\$3,000,000), four hundred eighty dollars (\$480);

Cities and towns having a taxable valuation of from three million dollars (\$3,000,000) to four million dollars (\$4,000,000), five hundred sixty dollars (\$560);

Cities and towns having a taxable valuation of from four million dollars (\$4,000,000) to five million dollars (\$5,000,000), six hundred forty dollars (\$640);

Cities and towns having a taxable valuation of more than five million dollars (\$5,000,000), shall pay six hundred forty dollars (\$640) plus fifty dollars (\$50) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars (\$5,000,000);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953; amd. Sec. 1, Ch. 138, L. 1959.

increased the fee in each classification for examination and deleted a sentence which set a maximum fee for any city at \$1,000.

Amendment

The 1959 amendment in the first sentence substituted the words "such fund" for the words "state general fund"; in-

Repealing Clause

Section 2 of Ch. 138, Laws 1959 repealed all acts and parts of acts in conflict therewith.

5-906. (6014.80) Payments by county free high schools. For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule:

All county free high schools having an attendance of two hundred (200) or less, sixty dollars (\$60);

All county free high schools having an attendance of in excess of two hundred (200) and not exceeding three hundred (300), seventy-five dollars (\$75);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), one hundred dollars (\$100);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600), one hundred twenty-five dollars (\$125);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), one hundred fifty dollars (\$150);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), two hundred dollars (\$200);

All county free high schools having an attendance in excess of fifteen hundred (1500), three hundred dollars (\$300).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed necessary by the state examiner, shall be based on the fees as set forth in section 5-910.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953; amd. Sec. 1, Ch. 139, L. 1959.

Repealing Clause

Section 2 of Ch. 139, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment raised the amount of the fee in each instance. For fees prior to amendment see parent volume.

5-907. (6014.81) Payments by irrigation districts. For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer, within sixty (60) days from the date of examination, the following amounts as charges for such examinations, to be computed by the state examiner: For each day spent in the examination of books and records of any irrigation district by the state examiner or his representative, a charge of sixty dollars (\$60.00) shall be made; and, for any fraction of a day spent in the examination of any irrigation district's books and records, a charge of seven and one-half dollars (\$7.50) per hour shall be made. It shall be the duty of the state examiner, or his representative, to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 195, L. 1945; amd. Sec. 1, Ch. 159, L. 1959.

Repealing Clause

Section 2 of Ch. 159, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-908. (6014.82) Payments by banks, investment and trust companies. For the credit of said fund, each bank, trust company or investment com-

pany, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee, based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

The minimum fee for the examination of any bank, trust company or investment company shall be the sum of three hundred dollars (\$300);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000), a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959.

Repealing Clause

Section 2 of Ch. 141, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-909. (6014.83) Payments by building and loan associations. For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

The minimum fee to be paid by any building and loan association shall be the sum of one hundred dollars (\$100);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000) a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 114, L. 1959.

Repealing Clause

Section 2 of Ch. 114, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised the fees. For section prior to amendment see parent volume.

5-910. (6014.84) Special examinations and fees. Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other county or municipal office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examination shall be charged for at the rate of sixty dollars (\$60.00) a day for each person engaged in the examination. All special examination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, except those collected from state agencies, shall be placed in the earmarked revenue fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining at the end of each current year shall be transferred by the state treasurer to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909 must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967.

Amendments

The 1959 amendment increased the fee per day from \$30 to \$60 and deleted a provision for expenses which read "plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees."

The 1963 amendment, in the last sentence of the first paragraph, inserted "except those collected from state agencies" and substituted "the earmarked revenue fund" for "a special fund to be known as the special examination fund," and deleted "in such special fund" after "moneys remaining"; inserted the second paragraph; and, in the last paragraph, inserted "enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909."

The 1967 amendment inserted "county or municipal" after "credit union or any other" in the first sentence of the first paragraph; and deleted the second paragraph in the old section which read, "The state examiner may also charge sixty dollars (\$60.00) a day for examining state agencies that spend moneys from funds other than the general fund, trust and legacy fund or agency fund. The charge shall be in proportion to the amount of such moneys spent to the total annual expenditures of the agency. All fees collected from state agencies shall be deposited in the revolving fund to the credit of the state examiner. All moneys remaining at the end of each current year shall be transferred to the general fund."

Repealing Clauses

Section 2 of Ch. 180, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 23 of Ch. 249, Laws 1967 read "Sections 82-1014, 82-1015, 82-1016, R.C.M. 1947, enacted as Sections 1, 2 and 3, Chapter 279, Laws of 1959, and sections 84-4403, 84-4404, and 84-4405, R.C.M. 1947, are repealed."

Effective Date

Section 24 of Ch. 249, Laws 1967 read "Sections 1 through 13 and section 24 of this act are effective on passage and approval. Sections 14 through 23 of this act are effective July 1, 1967."

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section 5-1001. Acceptance and issuance of drafts and letters of credit.

5-1028. Branch bank prohibited—exceptions.

5-1001. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank. [Effective January 1, 1965.]

History: En. Sec. 74, Ch. 89, L. 1927; amd. Sec. 11-103, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "not exceeding one (1) year" after "at sight or on time."

5-1007, 5-1008. (6014.91, 6014.92) Repealed.

Repeal

These sections (Secs. 80, 81, Ch. 89, L. 1927), relating to the liability of banks paying forged checks, and to checks de-

layed in presentment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1016, 5-1017. (6014.100, 6014.101) Repealed.

Repeal

These sections (Secs. 89, 90, Ch. 89, L. 1927), relating to bank liability on items forwarded, and to due diligence in for-

warding of items for collection, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1028. (6014.112) Branch bank prohibited — exceptions. No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transactions between banks.

With the prior approval of the superintendent of banks, any bank doing business in this state may establish and maintain not more than one (1) detached drive-in and walk-up facility consisting of one (1) or more teller's windows. The distance of the facility from the main banking house shall not exceed one thousand (1,000) feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall not be closer than two hundred (200) feet to a facility operated by any other bank nor closer than three hundred (300) feet to the main banking house of any other bank, the measurement to be made in a straight line from the

closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than one hundred and fifty (150) feet to a facility operated by any other bank nor closer than two hundred (200) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank and such other transactions as are normally and usually conducted or handled at tellers' windows in the main banking house.

History: En. Sec. 101, Ch. 89, L. 1927; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965.

vided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Amendments

The 1963 amendment made a minor grammatical change in the first sentence and added the second paragraph.

The 1965 amendment inserted the fourth sentence (relating to reduction of distances by mutual agreement) in the second paragraph.

Repealing Clause

Section 2 of Ch. 80, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 3 of Ch. 80, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 4 of Ch. 80, Laws 1965 pro-

Holding Company Banking

This section does not prohibit holding company banking. First Nat. Bank in *Billings v. First Bank Stock Corp.*, 197 F Supp 417, 427, affirmed in 306 F 2d 937.

Intention to Operate as Branch

A state bank whose stock was substantially all owned by a national bank did not violate this section, although the interlocking directorates of the national bank and the state bank at one time intended that the state bank should operate as a branch of the national bank, where steps were taken to eliminate any such intention. First Nat. Bank in *Billings v. First Bank Stock Corp.*, 197 F Supp 417, 427, affirmed in 306 F 2d 937.

Unitary Type of Operation

A bank did not violate this section where the unitary type of operation characteristic of branch banking was not present. First Nat. Bank in *Billings v. First Bank Stock Corp.*, 306 F 2d 937, 943, distinguished in 323 F 2d 290, 303.

5-1043. (6014.127) Repealed.

Repeal

This section (Sec. 116, Ch. 89, L. 1927), relating to the time limit on stop payment

orders, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1047 to 5-1049. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 19, L. 1951), relating to the time allowed banks for the refusal of demand items presented

for credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1051. Photographic or micro-film reproduction of bank records, etc.

Checking Account Records

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of

decedent's checking account were properly admitted as evidence. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042, 1044.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

Section 5-1114. Claims—order of payment—priorities.

5-1117. Disposition of unclaimed funds.

5-1130. Borrowing money for capital purposes—status of capital.

5-1107. (6014.137) Powers of superintendent on closing bank, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1108. (6014.138) Recourse of aggrieved bank, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1112. (6014.142) Claims—allowance and rejection.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1114. (6014.144) Claims—order of payment—priorities. Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

(1) to (8). * * * [Same as parent volume.]

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; amd. Sec. 11-104, Ch. 264, L. 1963.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

5-1117. (6014.147) Disposition of unclaimed funds. The superintendent shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon, which he has so held in trust for six months. A copy of such certificate shall also be filed with the state auditor, who shall make a record thereof.

The state treasurer shall deposit such funds and interest in the general fund of the state of Montana.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the same and if found correct so certify to the state board of examiners, who,

if they approve it, shall transmit it to the legislative assembly with a statement of their approval.

History: En. Sec. 137, Ch. 89, L. 1927; amd. Sec. 1, Ch. 143, L. 1961.

Amendment

The 1961 amendment inserted the second paragraph; substituted "state board of examiners" for "superintendent" in the first sentence of the last paragraph; and substituted the third sentence of the last paragraph for a sentence reading, "When satisfied as to the correctness of the claim and of the identity of the person, the superintendent shall approve the claim and forward it to the auditor, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records

to be due such depositor or creditor which shall be paid by the treasurer."

Funds Previously Transmitted

Section 2 of Ch. 143, Laws of 1961, provided for disposition of previously transmitted funds as follows: "Section 2. Disposition of unclaimed funds previously transmitted to the state treasurer. All funds and accumulated interest thereon heretofore transmitted to the state treasurer under the provisions of section 5-1117 of Replacement Volume 1, Part 2, of the Revised Codes of Montana, 1947, shall be deposited by the state treasurer in the general fund of the state of Montana."

5-1118. (6014.148) Disposition of assets remaining after payment, etc.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1130. (6017.1) Borrowing money for capital purposes—status of capital. Notwithstanding any other provision of law any commercial bank, savings bank, trust company or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the superintendent of banks, and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company or investment company to any person, copartnership or corporation, and for the purpose of determining the maximum amount of money which such bank may borrow, and for all other purposes of bank capital as may be required by law, except that the money so borrowed shall not in any event be considered in ascertaining the value and assessment of shares of any bank for the purpose of taxation.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; amd. Sec. 1, Ch. 11, L. 1967.

Amendments

The 1967 amendment deleted "and as may be required by the Reconstruction Finance Corporation or other agency or

quasi-agency of the federal government from which the money may be borrowed" after "superintendent of banks" and inserted "in full" "after payment in" in the first sentence and added the words "except that the money * * * purpose of taxation" at the end of the section.

CHAPTER 14—UNIFORM COMMON TRUST ACT

5-1401. Common trust fund authorized.

NOTE.—Uniform State Law. In addition to the states listed in the compiler's note in the parent volume the following

also have adopted the Uniform Common Trust Fund Act: District of Columbia, Illinois, Iowa, and Oklahoma.

TITLE 6—BONDS AND UNDERTAKINGS

- Chapter 1. Official bonds of state officers, 6-105 to 6-108.
2. Official bonds of county officers, 6-203 to 6-209.
3. General provisions relative to official bonds, 6-325, 6-326, 6-331.
4. Public works contractor's bond, 6-402.
6. Official bonds of city or town officers and employees, 6-601 to 6-608.

CHAPTER 1—OFFICIAL BONDS OF STATE OFFICERS

- Section 6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form.
6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.
6-107. Companies authorized to execute bonds.
6-108. Proration of bond premiums—payment of prorated amounts.

6-101 to 6-104. (464, 465, 469, 470) **Repealed.**

Repeal

These sections (Secs. 1051, 1052, Pol. C. 1895; Secs. 1, 2, Ch. 229, L. 1921; Sec. 1,

Ch. 161, L. 1937), relating to official bonds of state officers, were repealed by Sec. 51, Ch. 177, Laws 1965.

6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form. The state controller shall purchase all surety bonds for state officers and employees. As used in this act, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges or members and employees of the legislative assembly. A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the controller, subject to the approval of the attorney general.

History: En. Sec. 1, Ch. 177, L. 1965.

Title of Act

An act relating to surety bonds for state officers and employees: providing that the state controller shall purchase all surety bonds for state officers and employees; establishing requirements and procedures for the purchase of such bonds; amending sections 5-602, 6-325, 6-326, 6-331, 3-103, 3-205, 4-106, 4-110, 5-603, 26-102, 26-111, 26-115, 27-404, 32-

1601, 32-1602, 40-1727, 41-1603, 44-404, 53-101, 66-407, 66-514, 66-904, 66-1505, 66-2203, 66-2333, 71-202, 71-203, 72-102, 75-303, 75-1301, 75-2703, 77-120, 80-1205, 81-201, 81-208, 81-1403, 81-2010, 81-2013, 82-107, 82-601, 82-1230, 82-3105, 89-103, 89-118, 90-122, R. C. M. 1947; and repealing sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947.

6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids. All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the controller shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. If a state officer or the head of an agency, board or de-

partment feels that the amount of the bond set by the controller is excessive or inadequate, he may appeal to the board of examiners, whose decision shall be final. All bonds shall be purchased by competitive bid.

History: En. Sec. 2, Ch. 177, L. 1965.

6-107. Companies authorized to execute bonds. Bonds purchased by the state controller shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: En. Sec. 3, Ch. 177, L. 1965.

6-108. Proration of bond premiums—payment of prorated amounts. The state controller shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution. The controller shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965.

Saving Clause

Section 5 of Ch. 177, Laws 1965 read

"This act shall not affect the validity of bonds in effect on the effective date of this act."

CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

- Section 6-203. Purchase of bonds—individual and blanket bonds.
 6-204. Persons to be bonded—amounts—competitive offers solicited.
 6-205. State examiner to determine adequacy of amount.
 6-206. Companies authorized to execute bonds.
 6-207. Premiums charged against budgets.
 6-208. Approval of form of bonds—filing and recording.
 6-209. Conditions and signature of group bonds.

6-201, 6-202. (466, 467) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 229, L. 1921; Sec. 1, Ch. 66, L. 1939), relating

to the official bonds of county officers, were repealed by Sec. 10, Ch. 68, Laws 1967.

6-203. Purchase of bonds—individual and blanket bonds. The board of county commissioners shall purchase all surety bonds for county officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of county officers and employees.

History: En. Sec. 1, Ch. 68, L. 1967.

Title of Act

An act relating to surety bonds for county officers and employees; providing that the board of county commissioners shall purchase all surety bonds for county officers and employees; establishing

requirements and procedures for the purchase of such bonds; amending section 16-3204, R.C.M. 1947, by deleting the bonding provisions for county auditors; and repealing sections 6-201, 6-202, 6-302, 6-336, 16-904, 16-3602, 40-1727, and 93-407, R.C.M. 1947.

6-204. Persons to be bonded—amounts—competitive offers solicited. All elected and appointed county officers and employees shall be bonded. The amount for which a county officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity

for defalcation. The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

History: En. Sec. 2, Ch. 68, L. 1967.

6-205. State examiner to determine adequacy of amount. The amount for which any county officer or employer or group of officers or employees shall be bonded shall be subject to the supervision of the state examiner. If the state examiner determines that the amount of the bond is inadequate, he may require the board of county commissioners to purchase an adequate bond.

History: En. Sec. 3, Ch. 68, L. 1967.

6-206 Companies authorized to execute bonds. Bonds purchased by the board of county commissioners shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Sec. 4, Ch. 206, L. 1967.

6-207. Premiums charged against budgets. The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

History: En. Sec. 5, Ch. 68, L. 1967.

6-208. Approval of form of bonds—filing and recording. The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.

History: En. Sec. 6, Ch. 68, L. 1967.

6-209. Conditions and signature of group bonds. All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under section 6-306, R.C.M. 1947, except that the bond need not be signed by each officer or employee.

History: En. Sec. 7, Ch. 68, L. 1967.

Repealing Clause

Compiler's Note

Section 8 of Chapter 68, Laws 1967, provided: "This act shall not affect the validity of bonds in effect on the effective date of this act."

Section 10 of Ch. 68, Laws 1967 read "Sections 6-201, 6-202, 6-302, 6-336, 16-904, 16-3602, 40-1727, and 93-407, R.C.M. 1947, are hereby repealed."

CHAPTER 3—GENERAL PROVISIONS RELATIVE TO OFFICIAL BONDS

Section 6-325. Release of sureties.

6-326. Proceedings to obtain release from bond—statement—notice.

6-331. Applicable to what bonds.

6-302. (471) Repealed.

Repeal

This section (Sec. 1053, Pol. C. 1895; Sec. 1, p. 79, L. 1899; Sec. 1, Ch. 173, L.

1947), relating to judicial approval of official bonds, was repealed by Sec. 10, Ch. 68, Laws 1967.

6-313. (482) Suit on bonds.**References**

State ex rel. Farmers Elevator Co. of

Reserve v. District Court, — M —, 410 P 2d 160.

6-325. (494) Release of sureties. Any surety on the official bond of any county, city, town, or township officer, or on the official bond of any executor, administrator, guardian, or on the bond or undertaking of any person where by law a bond or undertaking is required, may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this act.

History: En. Sec. 1075, Pol. C. 1895;

re-en. Sec. 403, Rev. C. 1907; re-en. Sec.

494, R. C. M. 1921; amd. Sec. 1, Ch. 134,

L. 1941; amd. Sec. 6, Ch. 177, L. 1965.

Cal. Pol. C. Sec. 972.

Amendment

The 1965 amendment deleted "state" before "county, city" near the beginning of the section.

6-326. Proceedings to obtain release from bond—statement—notice. Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself, or some one in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A notice containing the object of such statement shall be served personally on the principal, unless he shall have left the state, or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four (4) successive publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners are principals, shall be filed with the county clerk, and when the county clerk or county commissioners are principals, the statement shall be filed with the district judge. Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor. Any surety desiring to be released from an executor's, administrator's or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority where the bond is filed on record. All statements provided for in this section must be served personally on the principal as in this section provided, if he can be found for service in the state of Montana; if not he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority: provided further, in all cases for which publication is provided, a printed or written notice posted in at least ten (10) conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "county or township officer" near the beginning of the section for "state officer"; deleted

"with the governor or secretary of state" before "a statement in writing" in the first sentence; and deleted a third sentence reading, "Any surety desiring to be released from the official bond of any county or township officer shall file and serve a similar statement."

6-331. (503) Applicable to what bonds. The provisions of this chapter apply to the bonds of county, town, or township officers or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: Ap. p. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965. Cal. Pol. C. Sec. 981.

Amendment

The 1965 amendment deleted "state"

before "county, town" near the beginning of the section; and added "except state officers and employees" at the end of the section.

References

State ex rel. Farmers Elevator Co. of Reserve v. District Court, — M —, 410 P 2d 160.

6-336. (508) Repealed.

Repeal

This section (Sec. 1089, Pol. C. 1895), relating to filing of the county clerk's

bond, was repealed by Sec. 10, Ch. 68, Laws 1967.

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

Section 6-402. Notice to contractor of furnishing provender, material or supplies required.

6-401. (5668.41) Contractors performing public work to furnish bond, etc.

Estoppel of Surety

This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of claims covered by the bond. *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.

Federal Court Actions

Sections 6-401 through 6-404 govern the court remedies in favor of suppliers and

materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works and they are the state law to be applied in federal court. *United States v. Reliance Ins. Co. of Philadelphia, Pa.*, 227 F Supp 939, 941.

Provender, Materials or Supplies

Equipment rental comes within the phrase "provender, materials or supplies" as used in a bond given under this section. *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.

6-402. (5668.42) Notice to contractor of furnishing provender, material or supplies required. Every person, firm or corporation furnishing provender, provisions, materials or supplies to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall not later than thirty (30) days after the date of the first delivery of such provender, material, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver provender, provisions, materials or supplies for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished, and that such contractor and his bond will be held for the same, and no suit or action shall be maintained in any

court against the contractor or his bond to recover for such provender, provisions, material or supplies, or any part thereof, unless the provisions of this act have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931; amd. Sec. 1, Ch. 115, L. 1967.

Amendments

The 1967 amendment increased from 7

to 30 days the time for materialmen supplying subcontractors to give notice to contractors, and substituted "certified" for "registered" before "mail."

6-404. (5688.44) Amount and terms of bond—notice of claimant, etc.

Attorney Fees

Under this section the prevailing use plaintiff is entitled to recover as compensation for attorneys such sum as the court shall adjudge reasonable for the institu-

tion and prosecution of proceedings against surety. *United States v. Reliance Ins. Co. of Philadelphia, Pa.*, 227 F Supp 939, 941.

CHAPTER 6—OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES

Section 6-601. Purchase of surety bonds by city or town council or commissioners—persons covered.

6-602. Bonding of elected or appointed city or town officers and employees—amount of bond—soliciting of offers.

6-603. Determination of adequacy of bond by state examiner.

6-604. Companies permitted to execute bonds.

6-605. Approval of bond by city or town attorney—filing.

6-606. Conditions in official bonds.

6-607. Premiums—charge against budget.

6-608. Application of act to commission and commission-manager forms of government.

6-601. Purchase of surety bonds by city or town council or commissioners—persons covered. The city or town council or commissioners shall purchase all surety bonds for city officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

History: En. Sec. 1, Ch. 67, L. 1967.

Title of Act

An act relating to surety bonds for city or town officers and employees; providing that the city council or commissioners shall purchase all surety bonds for city or town officers and employees;

establishing requirements and procedures for the purchase of such bonds; amending section 11-3244, R.C.M. 1947, by deleting the bonding provisions for county commissioners; and repealing sections 11-722, 11-723, 11-3124, 11-3324 and 40-1727, R.C.M. 1947.

6-602. Bonding of elected or appointed city or town officers and employees—amount of bond—soliciting of offers. All elected or appointed city or town officers and employees shall be bonded in such sums as the ordinance may require. The amount for which a city or town officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The city or town council or commission shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

History: En. Sec. 2, Ch. 67, L. 1967.

6-603. Determination of adequacy of bond by state examiner. The amount for which any city or town officer or employee or group of officers

or employees shall be bonded shall be subject to the supervision of the state examiner. If the state examiner determines that the amount of the bond is inadequate he may require the city or town council or commission to purchase an adequate bond.

History: En. Sec. 3, Ch. 67, L. 1967.

6-604. Companies permitted to execute bonds. Bonds purchased by the city or town council or commission shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Sec. 4, Ch. 67, L. 1967.

6-605. Approval of bond by city or town attorney—filing. The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.

History: En. Sec. 5, Ch. 67, L. 1967.

6-606. Conditions in official bonds. All official bonds covering a group of city or town officers or employees shall be made upon the same conditions as are required of a principal under section 6-306, R.C.M. 1947, except that the bond need not be signed by each officer and employee.

History: En. Sec. 6, Ch. 67, L. 1967.

6-607. Premiums—charge against budget. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the city or town general fund, or against the budget or budgets of those city or town funds, where the officer or employee renders service.

History: En. Sec. 7, Ch. 67, L. 1967.

6-608. Application of act to commission and commission-manager forms of government. This act applies to the bonding of all elected or appointed officer and employees under the commission form of city government and to the commission-manager form of city government.

History: En. Sec. 8, Ch. 67, L. 1967.

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter 1. Laws regulating the operation of building and loan associations, 7-113.1.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section 7-113.1. Loans and investments.

7-113.1. Loans and investments. Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963.

Title of Act

An act providing for the making of loans and investments by building and loan associations and savings and loan as-

sociations organized and operating under the laws of the state of Montana, and providing that such associations may make all real estate loans which may be made by federal savings and loan associations having domicile in the state of Montana.

7-122. (6355.21) Taxation of associations.

Application

This section is a statute for classification of property of building and loan associations for property tax purposes and has nothing to do with corporate license taxation. *Home Bldg. & Loan Assn. of Helena v. Fulton*, 141 M 113, 375 P 2d 312, 313.

Construction

There is no conflict between this section and sections 7-159 and 84-1501, since they deal with separate and distinct taxes. *Home Bldg. & Loan Assn. of Helena v. Fulton*, 141 M 113, 375 P 2d 312, 313.

7-159. Act controlling.

Construction

There is no conflict between this section and sections 7-122 and 84-1501, since they

deal with separate and distinct taxes. *Home Bldg. & Loan Assn. of Helena v. Fulton*, 141 M 113, 375 P 2d 312, 313.

TITLE 8—CARRIERS AND CARRIAGE

- Chapter 1. Motor carriers—license and regulation, 8-101, 8-103, 8-104.1 to 8-104.6, 8-108 to 8-110, 8-119, 8-121.
2. Pipe line carriers of oil and coal—regulation, 8-201, 8-202, 8-204 to 8-207, 8-210.
5. Bills of lading, Repealed—Section 10-102, Chapter 264, Laws of 1963.
7. Common carriers in general, 8-709.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

- Section 8-101. Definition of terms.
8-103. Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.
8-104.1. Board's duty to fix rates.
8-104.2. Rate schedules, filing with board.
8-104.3. Deviation from rate schedules unlawful.
8-104.4. Rate preference, discrimination forbidden.
8-104.5. Changes, revisions of rate schedules, how made.
8-104.6. Recovery of excess charges.
8-108. Certificate required of class A motor carriers—contents of application—fee.
8-109. Certificate required of class B motor carriers—contents of application—fee.
8-110. Certificate required of class C motor carriers—contents of application—fee.
8-119. Penalties for violations.
8-121. Acts which prima facie deem person to be motor carrier.

8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (g). * * * [Same as parent volume.]

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school busses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, insofar as the use of em-

ployees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j), (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963.

Amendment

The 1963 amendment deleted the words "or the transportation of freight or passengers by motor vehicles when done occasionally and not as a regular business" from the proviso to paragraph (h); added the words "or received or obtained through leasing, brokering or buy-and-sell

arrangements whereby a remuneration is obtained or derived for transportation service" to the first sentence of paragraph (i); substituted "An accommodative transportation movement" for "An occasional accommodative transportation service" at the beginning of the second sentence of paragraph (i); inserted "persons owning the property transported or" in the second sentence of paragraph (i); substituted "movement" for "service" at the end of the second sentence of paragraph (i); and added the third sentence of paragraph (i).

8-103. (3847.3) Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor. (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and non-discriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The board shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the board, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the board. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5)

years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the board and at an annual salary to be set by the board. The supervisor, and whatever field inspectors may be employed by the board to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963.

Amendment

The 1963 amendment divided the former text into subsections (a) and (c) and inserted subsection (b).

Discretionary Appointment

Taxpayer-citizen was not entitled to an injunction in an action questioning the qualifications of a supervisor appointed by the board of railway commissioners in proper exercise of their discretion. *Steel v. Board of Railroad Commrs.*, 144 M 432, 397 P 2d 101.

8-104. (3847.4) Repealed.

Repeal

This section (Sec. 4, Ch. 184, L. 1931; Sec. 1, Ch. 262, L. 1955), relating to rates

and schedules, was repealed by Sec. 7, Ch. 201, L. 1961.

8-104.1. Board's duty to fix rates. It shall be the duty of the board to fix, alter, regulate and determine just, fair, reasonable, non-discriminatory, and sufficient rates, fares, charges, classifications, and rules of service for the operation of class A and B motor carriers within this state. The board also may fix and determine reasonable maximum or minimum rates for the operations of any class C motor carrier when the same are required for the best interests of public transportation.

History: En. Sec. 1, Ch. 201, L. 1961.

Title of Act

An act to revise the requirements, procedures and methods of filing and adopting rates, charges, fares, classifications, and rules of service for motor carriers; repealing section 8-104, Revised Codes of

Montana, 1947, as amended by chapter 262, laws of Montana, 1955; repealing section 8-106, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing for an effective date.

8-104.2. Rate schedules, filing with board. Every class A or B motor carrier holding a certificate must maintain on file with the board a full and complete schedule of its rates, fares, charges, classifications, rules of service, and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file with and approved by the board on the effective date of this act shall remain in full force and effect until changed or modified by the board or by the carrier with the approval of the board.

No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the board. The board shall prescribe rules and/or regulations providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961.

8-104.3. Deviation from rate schedules unlawful. It shall be unlawful for any class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge or fare than that fixed by the board for the transportation service provided. When maximum or minimum rates have been established for any service provided by any class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate, or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any class A or B motor carrier, or any class C motor carrier subject to maximum or minimum rates, to refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected under the schedule of the class A or B carrier on file with the board or under the maximum or minimum rates established by the board for the class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and non-discriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of

service which shall be fair, just, reasonable, and non-discriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof.

Upon its own initiative, or upon the complaint of any interested party filed with the board within fifteen (15) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred and twenty (120) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the board of any complaint filed by any interested party to any proposed tariff change or revision and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred and twenty (120) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961.

8-104.6. Recovery of excess charges. Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the board may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made, provided that any such action must be brought within two (2) years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. If upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961.

Repealing Clause

Section 7 of Ch. 201, Laws 1961 read "That section 8-104, Revised Codes of Montana, 1947, as amended by chapter 262 of the laws of Montana, 1955, and section 8-106, Revised Codes of Montana, 1947, and all other acts or parts of acts in con-

flict herewith be and the same hereby are repealed."

Effective Date

Section 8 of Ch. 201, Laws 1961, provided this act should be in effect from and after its passage and approval. Approved March 7, 1961.

8-106. (3847.6) Repealed.

Repeal

This section (Sec. 6, Ch. 184, L. 1931), relating to discrimination in rates, was repealed by Sec. 7, Ch. 201, L. 1961.

8-108. (3847.8) Certificate required of class A motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 8, Ch. 184, L. 1931; amd. Sec. 22, Ch. 121, L. 1965.

Amendment

The 1965 amendment added "to thirty-

five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).

8-109. (3847.9) Certificate required of class B motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 9, Ch. 184, L. 1931; amd. Sec. 23, Ch. 121, L. 1965.

Amendment

The 1965 amendment added "to thirty-

five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).

8-110. (3847.10) Certificate required of class C motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 10, Ch. 184, L. 1931; five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).
amd. Sec. 24, Ch. 121, L. 1965.

Amendment

The 1965 amendment added "to thirty-

8-119. (3847.19) Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967.

Amendments

The 1963 amendment increased the minimum fine from \$5 to \$25 and the maximum fine from \$100 to \$500.

The 1967 amendment inserted "or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof" after "by such corporation."

8-121. (3847.21) Acts which prima facie deem person to be motor carrier. Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public, or solicits for trips for compensation, or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements, shall be deemed, prima facie, a "motor carrier" subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; amd. Sec. 3, Ch. 204, L. 1963.

Amendment

The 1963 amendment deleted the words "at trains, hotels or other places" which followed the words "among the public"; and inserted the words "or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements."

Separability Clause

Section 4 of Ch. 204, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 2—PIPE LINE CARRIERS OF OIL AND COAL—REGULATION

Section 8-201. Common carriers defined.

8-202. Pipe lines public utilities—jurisdiction.

8-204. Establishment of rates—hearing—complaints.

8-205. Railroad commissioners may require connections—facilities—rules.

8-206. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.

8-207. Discrimination prohibited—establishment of rates.

8-210. Duty to transport without discrimination.

8-201. (3848) Common carriers defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, or engaged in the business of transporting crude petroleum, coal, or the products thereof by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, coal, or the products thereof, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, coal, or the products thereof, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field, coal mine or field, or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" twice in subd. (a), once in subd. (b), twice in subd. (c), and once in subd. (d); and inserted "coal mine or field" after "oil field" in subd. (d).

8-202. (3849) Pipe lines public utilities—jurisdiction. It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum coal, or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-204. (3851) Establishment of rates—hearing—complaints. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R. C. M. 1921; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in the first sentence.

8-205. (3852) Railroad commissioners may require connections—facilities—rules. Every common carrier as above defined shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal product

tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963.

Amendment

The 1963 amendment substituted "crude petroleum tonnage, coal tonnage, or pe-

troleum or coal products tonnage" near the beginning of the section for "crude petroleum tonnage or petroleum products tonnage"; and inserted "coal" after "crude petroleum" or "crude oil" in three places.

8-206. (3853) **Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.** Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall

have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921;
re-en. Sec. 3853, R. C. M. 1921; amd. Sec.
5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in three places.

8-207. (3854) Discrimination prohibited—establishment of rates. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921;
re-en. Sec. 3854, R. C. M. 1921; amd. Sec.
6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-210. (3857) Duty to transport without discrimination. Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum, or coal, delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921;
re-en. Sec. 3857, R. C. M. 1921;
amd. Sec. 7, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "or coal" after "crude petroleum."

CHAPTER 4—CARRIERS OF PERSONS, PROPERTY AND MESSAGES— DUTIES AND OBLIGATIONS

§-405. (7815) General duties of carrier.

Application of Statute

Although this statute imposes upon the carrier the duty to exercise "the highest degree of care," it is but declaratory of the common law and does not constitute the carrier an insurer of the passenger's safety. *Wilson v. Northland Greyhound Lines, Inc.*, 166 F Supp 667, 669.

While a carrier is not an insurer of a passenger's safety, yet its duty toward a passenger is spelled out in this section. *Risken v. Northern Pac. Ry. Co.*, 137 M 57, 350 P 2d 831, 837.

References

Stiles v. Gove, 345 F 2d 991.

§-406. (7816) Vehicles.

References

Stiles v. Gove, 345 F 2d 991.

CHAPTER 5—BILLS OF LADING

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

§-501 to 8-507. (7828 to 7834) Repealed.

Repeal

These sections (Secs. 2830 to 2836, Civ. C. 1895; Sec. 1, p. 154, L. 1901; Secs. 5314 to 5320, Rev. C. 1907; Secs. 7828 to 7834,

R. C. M. 1921), relating to bills of lading, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 7—COMMON CARRIERS IN GENERAL

Section 8-709. Effect of written contract.

8-709. (7854) Effect of written contract. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 854, R. C. M. 1921; amd. Sec. 11-105, Ch. 64, L. 1963. Cal. Civ. C. Sec. 2176. Field Civ. C. Sec. 1142.

Amendment

The 1963 amendment added "except as otherwise provided in the Uniform Commercial Code" at the end of the section.

CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS

§-816 to 8-818. (7871 to 7873) Repealed.

Repeal

These sections (Secs. 2914 to 2916, Civ. C. 1895), relating to the responsibility of

carriers for the delivery of freight, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 9—CEMETERIES

Chapter 6. Authority over disposition of remains in mausoleums or columbariums—records, 9-604.

CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

9-121. (6489) Trustee or trustees of funds to be appointed, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 6—AUTHORITY OVER DISPOSITION OF REMAINS IN MAUSOLEUMS OR COLUMBARIUMS—RECORDS

Section 9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability.

9-604. Limitation of actions against mausoleum-columbarium — funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963.

Amendment

The 1963 amendment inserted "mortician or" before "funeral director" in the last sentence.

Separability Clause

Section 23 of Ch. 41, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are sev-

erable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 24 of Ch. 41, Laws 1963 read "Repeal. Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710 and 82-711, R. C. M., 1947, are repealed."

CHAPTER 7—CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS

9-705. Powers to make rules and regulations.

Compiler's Note

The reference in this section to sections 9-606 to 9-614 should read sections 9-706 to 9-714.

CHAPTER 8—DEDICATION OF MAUSOLEUM OR COLUMBARIUM
PROPERTY—PLATS—PROPERTY RIGHTS IN PLOTS

9-816. Removal of dedication by order of court.

Cross-Reference

Application of Montana Rules of Civil
Procedure to proceeding for removal, see
M. R. Civ. P., Rule 81(a), Table A.

TITLE 10—CHILDREN AND CHILD WELFARE

- Chapter 1. Children's center, Repealed—Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965.
5. Dependent and neglected children—proceedings for protection, 10-504, 10-506, 10-507, 10-509, 10-512, 10-524.
 6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-611, 10-611.1, 10-612, 10-617, 10-622, 10-632, 10-633.
 8. Day care facilities for children, 10-801 to 10-811.
 9. Reports of child neglect or abuse, 10-901 to 10-905.
 10. Interstate compact on juveniles, 10-1001 to 10-1006.

CHAPTER 1—CHILDREN'S CENTER

(Repealed—Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

10-101, 10-101.1, 10-102. (1484, 1485) Repealed.

Repeal

These sections (Secs. 1, 2, pgs. 189, 190, L. 1893; Sec. 1, Ch. 40, L. 1903; Sec. 1, Ch. 19, L. 1959; Sec. 69, Ch. 266, L. 1963), establishing, naming and providing for ad-

mittance of children to the Montana children's center, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2101 to 80-2107.

10-103, 10-104. (1486, 1487) Repealed.

Repeal

These sections (Sec. 1, Ch. 68, L. 1921), relating to general supervision of the

children's center and providing for a superintendent and a matron, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-105. (1488) Repealed.

Repeal

This section (Sec. 2480, Pol. C. 1895; Sec. 70, Ch. 266, L. 1963), relating to the superintendent of the children's center,

was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2101 to 80-2107.

10-106 to 10-109. (1489 to 1492) Repealed.

Repeal

These sections (Secs. 2481, 2482, 2486, Pol. C. 1895; Secs. 1260, 1261, 1265, Rev. C. 1907; Sec. 1, Ch. 162, L. 1919; Secs.

1489 to 1492, R. C. M. 1921), relating to the matron's duties and to training of inmates, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-110 to 10-114. (1493 to 1497) Repealed.

Repeal

These sections (Secs. 2 to 6, Ch. 162, L. 1919; Secs. 1 to 5, Ch. 198, L. 1935; Sec. 1, Ch. 128, L. 1963; Secs. 71 to 74, Ch. 266, L. 1963), relating to higher education of inmates of the Montana chil-

dren's center, the industrial school, and the vocational school for girls, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2107 and 80-2213.

10-115 to 10-117. (1498 to 1500) Repealed.

Repeal

These sections (Secs. 22, 25, pp. 193, 194, L. 1893; Secs. 2488, 2491, 2494, Pol. C. 1895; Secs. 1267, 1270, 1273, Rev. C.

1907; Secs. 1498 to 1500, R. C. M. 1921), relating to funds and property of the children's center, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-118 to 10-121. (1503 to 1506) Repealed.**Repeal**

These sections (Secs. 4 to 7, Ch. 40, L. 1903; Secs. 1, 2, Ch. 82, L. 1929; Sec. 7, Ch. 213, L. 1963; Secs. 75 to 77, Ch. 266, L. 1963), relating to admittance of chil-

dren to and the release of children from the Montana children's center, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2103 to 80-2106.

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN— PROCEEDINGS FOR PROTECTION

Section 10-504. Citation and procedure.

10-506. Duty of county board to investigate and report, when.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost.

10-509. Commitment of child to children's center or other disposition.

10-512. Suspension of sentence.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county.

10-501. (10465) Dependent and neglected children—definition.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

"Dependent" and "Neglected" Distinguished

Under this act, a "dependent child" is one who must be supported by someone other than its natural or legal guardians, while a "neglected child," which is a broader term, describes a situation where there has been parental failure to exercise the degree of care demanded by fam-

ily circumstances. In re Vikse, — M —, 413 P 2d 876.

Unfit Parents

Parents who beat one of two adopted children were not fit and proper parents within the meaning of this section and could be deprived of both children. In re Phelps, 145 M 557, 402 P 2d 593.

References

Cited or applied in Application of Bansbach, 133 M 312, 323 P 2d 1112, 1113.

10-503. (10467) Application to courts with reference to dependent, etc.**Residence of Petitioner**

Since the court's jurisdiction had to be determined as of the time a proceeding was commenced, the issue of the petitioner's residence did not become moot even though the petitioner had established the necessary residence since the hearing in the proceeding. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

The word "resident" as used in this section must denote one actually domiciled within the county and in a proceeding to have a child declared dependent and neg-

lected, where the petitioner was not a resident of the county where the child resided, the court was without jurisdiction to proceed. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 122, 123.

Where petitioner was not domiciled, and thus not a resident of the county where the child resided, the court was without power to attempt to confer jurisdiction by an amendment to conform to the alleged proof that petitioner was domiciled in such county. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

10-504. (10468) Citation and procedure. Upon the filing of such petition, if it shall appear that one or both of said parents, or guardian, if there be no parent, reside in said county, the judge of said court shall issue a citation fixing the day and time of hearing of such petition, which shall be served upon one or both of said parents or guardian, if any, if either can be found in said county, not less than two (2) days before the time fixed for said hearing, requiring them to appear on said day and hour and show cause, if any, why said child should not be declared, by said court, to be a dependent or neglected child, and sent to the

Montana children's center, or otherwise cared for. In case it shall appear by said petition that neither of said parents is living, or does not reside in said county, or in case one or both of said parents, or guardian, in case there be no parents, shall endorse on said petition a request that the child be declared to be a dependent child, then the citation herein provided for need not be issued, and the court may thereupon proceed to the examination and hearing provided for; provided, however, that in all cases, except where the proceeding is instituted or commenced by a representative of the division of child welfare service of the state department of public welfare, a citation must be issued and served upon a representative of the division of the child welfare service of the department of public welfare of the state of Montana, either personally or by mail. It shall be the duty of the officer receiving such citation to use diligence to find and serve the same on one or both of said parents, or upon the guardian, who shall represent such child in court; and in case there is neither of these found, then the court shall appoint an officer of the division of child welfare service, or some responsible taxpayer of said county, to represent said child in court, and the court may also appoint an attorney to represent said child. In case one or both of said parents of such child appear in court, it shall be the duty of the district judge to explain to the one so appearing the effect of an order of court, sending their child to the state home, or declaring it to be a dependent child. In case any dependent child is taken away from its parents or guardian under the provisions of this act, such parents or guardian shall thereafter have no right over or to the custody, service, or earnings of said child, except upon condition, in the interest of such child, as the court may impose or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian.

History: En. Sec. 4, Ch. 92, L. 1907; re-en. Sec. 7832, Rev. C. 1907; re-en. Sec. 10468, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1947; amd. Sec. 80, Ch. 199, L. 1955.

Amendment

The 1965 amendment substituted "Montana children's center" for "state orphan's home" near the end of the first sentence.

Jurisdiction Based on Service

The district court lacked jurisdiction to

find a minor child dependent and neglected and to award her to the care of the child welfare service when service of citation was by publication and there was no service of notice of the action on the father who was a resident of the county. In re Young, 143 M 230, 388 P 2d 379.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-505. State department of public welfare successor to bureau, etc.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-506. Duty of county board to investigate and report, when. Whenever any petition is filed with the clerk of a district court in accordance with the provisions of section 10-503, and after citation has been issued as provided in section 10-504, the clerk of such court must immediately deliver to the county board of public welfare of the county in which the petition is filed, a copy of such petition with a notation thereon giving

the day and time fixed by the court for hearing such petition. Upon receipt of such copy of petition it shall be the duty of some member of the staff of such county board of public welfare to make an investigation for the purpose of ascertaining whether the parents or parent, if any, of such child live within such county and the financial ability of such parents or parent, if any, to pay the cost of taking care of such child in a foster home, and must file with the clerk of such court, before the time fixed for such hearing, a written report of such investigation.

History: En. Sec. 2, Ch. 145, L. 1943; amd. Sec. 78, Ch. 199, L. 1965.

Amendment

The 1965 amendment deleted "or in the Montana state orphans' home" after "foster home" near the end of the section.

Ability to Support Child

Since ability of parents to support chil-

dren was not determined in compliance with this section and section 10-507, but was left to testimony to be elicited at a later hearing, order compelling parents to pay support costs in action depriving them of the children under section 10-501 was set aside. In re Phelps, 145 M 557, 402 P 2d 593.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost. On the hearing the court may hear evidence regarding the financial ability of any such parents or parent, to pay such cost, and may take into consideration the report of such investigation filed with the clerk of the court, as provided in section 10-506. And if, on such hearing, the court shall find and determine that said child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and such child shall be ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay therefor such amount as the court may deem proper.

If such child be placed in a foster home the state department of public welfare shall pay one-half ($\frac{1}{2}$) of the cost thereof, and the county in which such child resides shall pay the other one-half ($\frac{1}{2}$) thereof, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents, provided that one-half ($\frac{1}{2}$) of any amount collected by the county from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of public welfare, and by it paid over to the state treasurer, who shall deposit the same to the credit of the state general fund.

History: En. Sec. 3, Ch. 145, L. 1943; amd. Sec. 1, Ch. 170, L. 1961; amd. Sec. 79, Ch. 199, L. 1965.

Amendments

The 1961 amendment substituted the words "Montana children's center" for "orphans' home" each time they appear and increased the county contribution formerly specified in the second sentence from \$10.00 to \$25.00.

The 1965 amendment divided the section into two paragraphs; deleted "placed in the said Montana children's center or" before "placed in a foster home" in the second sentence of the first paragraph; and deleted "and if on such hearing any

child shall be ordered placed in the said Montana children's center, the county in which such child resides shall pay to said Montana children's center twenty-five dollars (\$25.00) per month for such time as the child shall remain therein, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents" at the end of the second sentence of the first paragraph.

Ability to Support Child

Since ability of parents to support children was not determined in compliance with this section and section 10-506, but

was left to testimony to be elicited at a later hearing, order compelling parents to pay support costs in action depriving them of the children under section 10-501 was set aside. In re Phelps, 145 M 557, 402 P 2d 593.

10-509. (10470) Commitment of child to children's center or other disposition. Upon the hearing of any such case, if the said child shall be found to come within any of the provisions of section 10-501, it shall be deemed a dependent or neglected child, and an order may be entered committing it to the Montana children's center; and if said center is unable to receive said child, or if, from any other reason, it shall appear to be to the best interest of said child, the court may make such disposition of said child as seems best for its social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of _____, ss:

In the District Court for the _____ judicial district.

On the _____ day of _____, 19____, _____ a minor of this county was charged on the petition of _____, the County Attorney of _____ county, with being a dependent and neglected child under the provisions of chapter 5, Title 10, R.C.M. 1947. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The child's guardian is _____.

The child is in the custody of _____.

It is ordered that _____ be committed to _____

_____ until discharged as provided by law.

Witness my hand this _____ day of _____ A. D. 19____.

Judge

History: En. Sec. 6, Ch. 92, L. 1907; re-en. Sec. 7834, Rev. C. 1907; re-en. Sec. 10470, R. C. M. 1921; amd. Sec. 81, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "or neglected" after "dependent" in the first

sentence; substituted "Montana children's center" and "center" for "state orphans' home" and "home" in the first sentence; substituted "social" for "moral" before "and physical welfare" at the end of the first sentence; and added the second sentence together with the form.

10-510. (10471) Committed child becomes ward of custodian.

References

In re Vikse, — M —, 413 P 2d 876.

10-512. (10473) Suspension of sentence. The court may suspend any sentence hereunder, or release any person sentenced under this act from

custody, upon condition that such person shall furnish a good and sufficient bond or undertaking to the state of Montana, in such penal sum, not exceeding two thousand dollars, as the court shall determine, conditioned for the payment of (1) such amount as the court may order, not exceeding twenty-five dollars per month for each child, for the support, care, and maintenance of such child while under the guardianship or in the custody of any individual or any public, private, or state home, institution, association, or orphanage, other than an institution in the department of institutions, to which the child may have been committed or entrusted under the provisions of the law of the state concerning dependent and neglected children, or (2) the per diem charge established by the department of institutions for each child committed to the Montana children's center.

History: En. Sec. 9, Ch. 92, L. 1907; re-en. Sec. 7837, Rev. C. 1907; re-en. Sec. 10473, R. C. M. 1921; amd. Sec. 82, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted the designation for clause (1); inserted "other than an institution in the department of institutions" after "or orphanage" in clause (1); and added clause (2).

10-516. (10477) Act to be construed liberally.

Reclaiming Child

Father had not lost right to reclaim child from foster home operated by the state where placement had been under a parental agreement that placing would be temporary only for a prescribed period, and then permanent, and father had failed

to stipulate what he would do with child after that time, since father's financial condition had improved after time of placing the child in the home and he evinced a desire to care for the child. In re Vikse, — M —, 413 P 2d 876.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department within twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965.

Amendment

The 1965 amendment inserted "or licensed private institutions" after "approved family foster homes" in the first paragraph.

Repealing Clause

Section 2 of Ch. 194, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section 10-602. Definitions.

10-611. Hearing—judgment.

10-611.1. Power of district court to commit child to reception and evaluation center.

10-612. Form of commitment to state juvenile facility.

10-617. Penalty for improper and negligent training of children.

10-622. Probation officers—appointments—removal—salaries.

10-632. Institutional and welfare laws not repealed.

10-633. Publicity forbidden.

10-601. Construction and purpose of the act.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

Repeal of Conflicting Laws

By the enactment of chapter 227, Laws of 1943, and its amendments covering juveniles and creating juvenile courts, the legislature intended to repeal all prior

laws in conflict therewith, and amended the general criminal code insofar as it conflicts with the statutes relating to juveniles. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 499.

References

Cited or applied in Application of Bansbach, 133 M 312, 323 P 2d 1112, 1113.

10-602. Definitions. (1). * * * [Same as parent volume].

(2) The words "delinquent child" include:

(a) A child who has violated any ordinance of any city.

(b) A child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.

(c) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.

(d) A child who is habitually truant from school or home.

(e) A child who habitually so departs himself as to injure or endanger the morals or the health of himself or others.

(f) A child who unlawfully, negligently, dangerously, or wilfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963.

Amendment

The 1963 amendment inserted the words "rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R. C. M. 1947, arson in the first and second degree, assault in the second degree" in paragraph (2) (b).

Citation to Parents

Although youths admitted violations contained in the petition while on the stand, court was without jurisdiction to order commitment where second hearing proceeded upon citation to parents which was not in compliance with section 10-606. State v. Johnson, 141 M 1, 374 P 2d 504, 506.

Criminal Court Jurisdiction

The words "and carrying a deadly weapon or weapons with intent to assault" do not modify robbery or any of the other specifically listed crimes; therefore, as to the crime of robbery, possession of a weapon need not be charged. *State ex rel.*

Keast v. District Court, 136 M 367, 348 P 2d 135. (Dissenting opinion, 136 M 367, 348 P 2d 135, 139.)

References

Cited in *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 497.

10-603. Jurisdiction.**Right to Trial by Jury**

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the court was without jurisdiction to try him without a jury. *Application of Bansbach*, 133 M 312, 323 P 2d 1112, 1113.

A child under the age of 16 years may never be tried for a law violation in the district court. He is solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 498, 499.

References

In *re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

10-604. Jury.**References**

Cited or applied in *Application of Bansbach*, 133 M 312, 323 P 2d 1112,

1115; In *re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

10-605. Information—investigation—petition.**Informal Hearing**

This section and section 10-611 must be read together and the informal manner in which a hearing may be conducted as provided in section 10-611 refers to the preliminary inquiry provided for in this section. In *re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

Substance of Petition

The substance of the petition under this section must be the facts which bring the child within the provisions of section 10-602. *State v. Johnson*, 141 M 1, 374 P 2d 504, 506.

10-606. Citation—notice—custody of the child.**Defective Citation**

A citation was fatally defective where it failed to recite substance of petition. *State v. Johnson*, 141 M 1, 374 P 2d 504, 506.

tional if the parties voluntarily appear. In *re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

Jurisdiction

The issuance of a citation in a delinquent child proceeding is not jurisdic-

References

In *re Allamaras*, 139 M 130, 361 P 2d 340.

10-607. Service of citation.**Personal Service**

Service of the citation on an adult brother of the child's father at the father's home was not sufficient service on the father. In *re Allamaras*, 139 M 130, 361 P 2d 340, explained in 139 M 592, 596, 366 P 2d 718.

References

In *re Gonzalez*, 139 M 592, 366 P 2d 718, 720; *State v. Johnson*, 141 M 1, 374 P 2d 504, 505.

10-610. Transfer from other courts.**Criminal Information**

District criminal court has no jurisdiction to authorize or order the filing of a criminal information against a juvenile child of the age of 15 years and less than

16 years of age, nor to try such child in the district court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 497.

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2)(b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision upon such terms as the court shall determine.

(2) Commit the child to a suitable public institution or agency, except youth forest camps; or commit the child to the department of institutions or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare, and authorized to care for children; or to place them in suitable foster homes, approved by the department of public welfare, or the probation department.

(3) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, be kept separate and apart at all times from those inmates who are over the age of twenty-one (21) years.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1951; amd. Sec. 2, Ch. 134, L. 1967.

Amendments

The 1961 amendment added the proviso to the second sentence of the first paragraph.

The 1967 amendment inserted "except youth forest camps; or commit the child to the department of institutions" after "or agency" in subdivision (2) of the second paragraph.

Due Process

Even though a hearing may be informal, the requirements of due process must be met; where there was no sworn testimony, no proof, no representation by counsel, no proper citation to the parent, and no hearing in fact, an order of commitment to the industrial school was reversible. In re Allamaras, 139 M 130, 361 P 2d 340, explained in 139 M 592, 596, 366 P 2d 718, 720.

Informal Hearing

This section and section 10-605 must be read together and the informal manner in which a hearing may be conducted

as provided in this section refers to the preliminary inquiry provided for in section 10-605. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

An informal trial is improper when the hearing is upon a petition of county attorney charging a minor child, sixteen years of age, with being a delinquent child, which could result in commitment. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Stenographic Record of Evidence

Proceeding upon a petition of county attorney charging minor with being a delinquent child, resulting in commitment of child to industrial school, was remanded to district court where no stenographic record had been made of the evidence presented in the juvenile court. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-611.1. Power of district court to commit child to reception and evaluation center. The district courts of this state having jurisdiction over juvenile offenses may commit a child held under its jurisdiction on a charge under which the child could be adjudged a delinquent to a reception and evaluation center for children as established by law. Such commitment shall be in sole discretion of the district judge and shall be for a period not to exceed forty-five (45) days.

History: En. Sec. 1, Ch. 134, L. 1967.

Title of Act

An act providing for the commitment of a child held on a charge under which the child could be adjudged a delinquent

to a reception and evaluation center for children for diagnostic study prior to hearing and judgment; amending section 10-611 relating to hearing and judgment in juvenile cases.

10-612. Form of commitment to state juvenile facility. Whenever under the provisions of this act the court orders a delinquent child committed to the state vocational school for girls, state industrial school or other state department of institutions juvenile facility, the form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of _____, ss:

In the district court for the _____ judicial district.

On the _____ day of _____, 19____, _____, a minor of this county, _____ years of age, was brought before me charged with _____. Upon due proof I find that _____ is a suitable person to be committed to _____.

It is ordered that _____ be committed to _____ until _____ attains the age of 21 or is sooner legally discharged or placed out.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The names and addresses of other near relatives are:

Witness my hand this ____ day of _____ A.D. 19__.

Judge

History: En. Sec. 11, Ch. 227, L. 1943; amd. Sec. 83, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted references to the vocational school for girls

and to "other state department of institutions juvenile facility"; substituted the form for a reference to a form formerly contained in section 80-815; and made minor changes in phraseology.

10-617. Penalty for improper and negligent training of children. Any parent or parents, legal guardian, or any other person who shall encourage, wilfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dram shop or dram shops, where intoxicating liquors are sold, or to wander about the streets of any town or city in the nighttime, without being on lawful business or occupation, or to habitually wander about or visit any railroads or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to use habitually any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold, or in any gambling house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor and upon trial and conviction thereof shall be fined in a sum not less than ten dollars (\$10.00) and not to exceed one thousand dollars (\$1,000.00), or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 227, L. 1943; amd. Sec. 1, Ch. 22, L. 1959.

Amendment

The 1959 amendment inserted the word "any" after the words "legal guardian, or" near the beginning of this section; deleted the words "or to patronize or visit any public poolroom or poolrooms, or

bucketshop" which appeared after the words "where intoxicating liquors are sold"; made the word "railroad" plural, and deleted the word "yards" which had appeared after the word "railroad."

Repealing Clause

Section 2 of Ch. 22, Laws 1959 repealed all acts and parts of acts in conflict therewith.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having juris-

diction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed nine thousand dollars (\$9,000), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965; amd. Sec. 1, Ch. 7, L. 1967.

Amendments

The 1961 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$4,800 to \$5,400; and, at the end of the section, deleted "or four thousand three hundred twenty dollars (\$4,320.00) per year."

The 1963 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$5,400 to \$6,000.

The 1965 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$6,000 to \$6,900.

The 1967 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$6,900 to \$9,000.

Repealing Clauses

Section 2 of Ch. 166, Laws 1961 and Sec. 2 of Ch. 115, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Section 2 of Ch. 94, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 166, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 3 of Ch. 115, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

10-629. County attorney to prosecute.

References

In re Gonzales, 139 M 592, 366 P 2d 718, 720.

10-630. Appeals.

Bill of Exceptions

A juvenile who appeals from a commitment by virtue of the provisions of this section has the right to have the evidence presented in the district court

settled in a bill of exceptions and brought before the supreme court for a review under section 93-5505. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-632. Institutional and welfare laws not repealed. Nothing in this act shall be construed to repeal any portion of the acts relating to the state vocational school for girls or state industrial school, or the act or

acts relating to the state department of public welfare or the public welfare act.

History: En. Sec. 33, Ch. 227, L. 1943; amd. Sec. 84, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state

vocational school for girls or state industrial school" for "industrial and vocational schools" and "state department of public welfare" for "bureau of child and animal protection."

10-633. Publicity forbidden. No publicity shall be given to the identity of an arrested juvenile or to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children, except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony.

History: En. Sec. 12, Ch. 276, L. 1947; amd. Sec. 2, Ch. 132, L. 1961.

Amendment

The 1961 amendment, after the words "shall be given" inserted the words "to the identity of an arrested juvenile or" and at the end of the section, added "except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony."

Repealing Clause

Section 3 of Ch. 132, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 132, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN

Section 10-801. Definitions.

10-802. License required—term of license—no fee charged.

10-803. Standards for child care.

10-804. Fire safety—certification required by state fire marshal.

10-805. Health protection—certificate required by state board of health.

10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees.

10-807. Provisional license.

10-808. License—renewal.

10-809. Supervision—inspection—consultation—records—reports.

10-810. License—denial—nonrenewal—revocation—hearing.

10-811. Violations.

10-801. Definitions. The word "child" wherever used in this act shall mean any person under twelve years of age. "Day Care Facility" shall mean any person, group of persons, association or place, incorporated or unincorporated, that receives for care during the day or a part of the day three or more children of separate families and continues this type of care for five or more consecutive weeks. It excludes the person who limits care to children who are related to him by blood or marriage or under his legal guardianship and all group facilities established chiefly for educational purposes. "Family Day Care Home" shall mean a family home that receives from three to six children of separate families for care during the day or part of the day for five or more consecutive weeks. "Day Care Center" shall mean any day care facility that receives seven or more children for care for five or more hours of the day for five or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded.

History: En. Sec. 1, Ch. 247, L. 1965. **Title of Act**

An act relating to the licensing of day care facilities for children.

10-802. License required—term of license—no fee charged. No person, group of persons, or corporation shall establish and maintain a day care facility for children unless licensed to do so by the state board of public welfare. The license shall be valid for one year. There shall be no fee for the license.

History: En. Sec. 2, Ch. 247, L. 1965.

10-803. Standards for child care. The state board of public welfare shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the state board of health and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

- (a) character, suitability, and qualifications of applicant, and other persons directly responsible for the care of children
- (b) the number of individuals or staff required for adequate supervision and care of children in day care centers
- (c) child care programs and practices essential to the protection of health, safety, development, and well-being of children
- (d) adequate and appropriate admission policies
- (e) adequacy of physical facilities and equipment
- (f) general financial ability and competence of applicant to provide necessary care for children and maintain prescribed standards.

History: En. Sec. 3, Ch. 247, L. 1965.

10-804. Fire safety—certification required by state fire marshal. The state fire marshal shall adopt, promulgate, and enforce rules and regulations for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as he deems necessary. Each applicant for a license to operate a day care center shall submit to the department of public welfare a certificate of approval indicating that fire safety rules and regulations have been met before a license can be issued, provided that in all nonfire-resistant homes two stories or more in height with ten or more children, automatic sprinkler systems acceptable to the state fire marshal shall be installed, with said state fire marshal to issue for the information and use of the board, certificates of compliance with fire regulations and standards applicable to the facilities.

History: En. Sec. 4, Ch. 247, L. 1965.

10-805. Health protection—certificate required by state board of health. The state board of health shall adopt rules and regulations for the protection of children in day care centers from the health hazards of overcrowding, food preparation and communicable diseases and arrange for such inspections and investigations as it deems necessary. Each applicant for a license to operate a day care center shall submit to the

board of public welfare a certificate of approval that state board of health rules and regulations have been met before a license can be issued.

History: En. Sec. 5, Ch. 247, L. 1965.

10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees. The state board of public welfare is hereby authorized and directed to issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. This includes agencies now caring for such children who may desire to operate as a day care facility in the future. Application for a license shall be made to the state board of public welfare through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state board. Upon receipt of the application, the state board of county welfare department, shall, within a reasonable time, make an investigation to determine whether or not a license should be granted.

The state board of public welfare shall prescribe the conditions upon which such licenses are issued, and will make such rules and regulations for the conduct of the affairs of such facilities as are consistent with the welfare of the children received, provided; however, that the said state board of public welfare must issue licenses to agencies meeting the following minimum requirements;

(a) the applicant, his employees, and all those persons who will come in direct contact with the children shall be of good moral character
(b) the staff of the facility shall be sufficient in number to provide adequate supervision and care of the children admitted

(c) essential programs and practices carried on by the facility staff shall be developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) applicant and staff shall be qualified by practical experience or education or training, to give good care and treatment to the children

(e) physical facilities shall be of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) intake records shall be kept on each child admitted for care. Public liability insurance and fire insurance shall currently be in force for the protection of the operator, his staff and the facility

(g) the applicant and staff will limit admissions to the maximum number indicated on the current license

(h) the applicant will arrange for the necessary precautions to guard against communicable diseases.

History: En. Sec. 6, Ch. 247, L. 1965.

10-807. Provisional license. The state board of public welfare may, in its discretion, issue a provisional license for a period of not more than six months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center

shall be certified by the state fire marshal and the state board of health may not be waived.

History: En. Sec. 7, Ch. 247, L. 1965.

10-808. License—renewal. If a licensed day care facility desires to apply for a renewal of its license, a request for renewal shall be made in writing to the state board of public welfare ten days prior to the expiration of its license.

History: En. Sec. 8, Ch. 247, L. 1965.

10-809. Supervision—inspection—consultation—records—reports. It shall be the duty of the board of public welfare or their authorized representative to make periodic visits to all licensed day care facilities to insure that minimum standards are maintained and to give consultation upon request to every licensee who desires to upgrade the services of his facility. It shall be the duty of the board or their authorized representative to assist applicants in meeting the minimum requirements. It shall be the duty of every applicant and every licensee to give right of entrance and inspection of premises to representatives of the board, at reasonable times, to keep and maintain such records as the board may prescribe, to permit inspection of these records, and to report to the board such facts as may be required on blanks furnished by the board.

History: En. Sec. 9, Ch. 247, L. 1965.

10-810. License — denial — nonrenewal — revocation — hearing. The board, after notice and opportunity for hearing to the applicant of [or] licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee within such thirty (30) days' period, commences an action in the district court, pursuant to this section. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board with the advice of the advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is reviewed pursuant to this section. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

Any applicant or licensee of the state aggrieved by the decision of

the board after a hearing, may, within thirty (30) days after mailing or serving of notice of the decision as provided in this section, commence an action in the district court of the county in which the long term care facility is located or to be located, by the filing of a verified complaint against the board as defendant, and summons shall issue and all further proceedings be conducted as in the case of ordinary civil actions. The board shall, upon filing its answer, certify and file therewith in the court wherein the action is pending a certified copy of the record and decision, including the complete transcript of the hearings on which the decision is based. Findings of fact by the board shall be conclusive unless substantially contrary to the weight of the evidence, or unless in conflict with law, but upon good cause shown the court may remand the case to the board to take further evidence, and the board may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the board and either the applicant or licensee or the board or state may apply for such further review by appeal or otherwise, as is provided by law. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

History: En. Sec. 10, Ch. 247, L. 1965.

10-811. Violations. Whenever the board of public welfare is advised or has reason to believe that any person, group of persons, or corporation is operating a child care facility without a license, it shall make an investigation to ascertain the facts. If it finds that such child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general of this state or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition to the foregoing, the state board of public welfare, or its authorized agent, may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act, or to enforce compliance with any order, rule, or regulation of the board pursuant to the provisions of this act, or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, under unanimous consent of all its members, may apply to the district court of the district wherein the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party, whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of Montana state board of public welfare, and it shall not be necessary in any action to which the board is a party, that such action be brought by or against the state of Montana on relation of the Montana state board of public welfare. The board shall have the power to institute action by its own attorney or counsel, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court of the county in which the action is taken, or the

attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.

History: En. Sec. 11, Ch. 247, L. 1965.

CHAPTER 9—REPORTS OF CHILD NEGLECT OR ABUSE

- Section 10-901. Declaration of policy.
 10-902. Reports.
 10-903. Action on reporting.
 10-904. Immunity from liability.
 10-905. Admissibility of evidence.

10-901. Declaration of policy. It is the policy of this state to provide for the protection of children who have had physical injury or willful neglect inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection.

History: En. Sec. 1, Ch. 178, L. 1965.

Title of Act

An act providing for the reporting of physical abuse or willful neglect of children; providing for action to be taken by the county attorney in cases where such

reports are made; providing immunity from liability for those persons participating in making such reports; and providing for the admissibility of such reports into evidence in proceedings which result from the making of such reports.

10-902. Reports. Any licensed physician and surgeon, resident or intern, who examines, attends or treats a child under the age of eighteen (18) years, or any registered nurse, practical nurse, any visiting nurse, any schoolteacher, or any social worker acting in his or her official capacity, having reason to believe that such child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the county attorney in the county where such examination is made or such child is located; provided that when attendance with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make the report forthwith. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as it conveniently may be after it is initially made by telephone or otherwise, and it shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible therefor, and the facts which led the person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965.

10-903. Action on reporting. If from said report it shall appear that the child suffered such injury or injuries or willful neglect in the county

in which the examination was made, the county attorney receiving the report shall immediately cause to be made the investigation hereinbelow referred to. If from such report it shall appear that the child suffered such injury or injuries or willful neglect in a county other than that in which the examination was made, the county attorney receiving the report shall forthwith transmit such report to the county attorney of the county in which it appears such injury or injuries or willful neglect were suffered, and the county attorney of the latter county shall immediately cause to be made the investigation herein referred to. In making such investigation of the report, the county attorney may utilize the services of the county welfare department and all other departments of his county. The investigation shall be made into the home of the child involved and into the circumstances surrounding the injury of the child, and into all other matters which, in the discretion of the county attorney shall be relevant and material to said investigation.

History: En. Sec. 3, Ch. 178, L. 1965.

10-904. Immunity from liability. Anyone participating in the making of a report pursuant to the provisions of this act or participating in [a] judicial proceedings resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965. around the word "a" in the second line to indicate surplusage.

Compiler's Notes

The compiler has inserted brackets

10-905. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this act or in any proceeding where such a report or any contents thereof are sought to be introduced into evidence, such report or contents thereof or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

History: En. Sec. 5, Ch. 178, L. 1965.

CHAPTER 10—INTERSTATE COMPACT ON JUVENILES

- Section 10-1001. Compact ratified—text.
 10-1002. Juvenile compact administrator.
 10-1003. Supplementary agreements.
 10-1004. Financial arrangements.
 10-1005. Responsibilities of state departments, agencies and officers.
 10-1006. Additional procedures not precluded.

10-1001. Compact ratified—text. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

ARTICLE I—FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) co-operative supervision of delinquent juveniles on probation or parole;

(2) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake co-operatively.

In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—DEFINITIONS

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—RETURN OF RUNAWAYS

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has

run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him

shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—RETURN OF ESCAPEES AND ABSCONDERS

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody of supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation

or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

ARTICLE VI—VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII—CO-OPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion,

may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(c) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII—RESPONSIBILITY FOR COSTS

(a) That the provisions of article IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of cost, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX—DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or

detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the co-operative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

ARTICLE XI—ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing.

When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present article.

ARTICLE XV—SEVERABILITY

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be [affected] thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 76, L. 1967.

Compiler's Notes

The compiler inserted the bracketed word in Article XV.

Title of Act

An act relating to Interstate Compact on Juveniles authorizing the state of Mon-

tana to enter into a compact with any of the United States, its territories and possessions for the return of absconding or escaping juveniles and mutual assistance in supervision of juveniles on probation and parole; providing for the appointment of a juvenile court compact administrator, prescribing powers and duties; and providing an effective date.

10-1002. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to co-operate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967.

10-1003. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967.

10-1004. Financial arrangements. The compact administrator, subject to the approval of the state controller may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967.

10-1005. Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967.

10-1006. Additional procedures not precluded. In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967.

Effective Date

Section 7 of Ch. 76, Laws 1967 provided

the act should be in effect from and after its passage and approval. Approved February 20, 1967.

TITLE 11—CITIES AND TOWNS

- Chapter 4. Additions of platted tracts to cities and towns, 11-403.
6. Plats of cities and towns and additions thereto, 11-616.
 7. Officers and elections, 11-710, 11-713 to 11-716, 11-725, 11-726, 11-728, 11-729, 11-731.
 9. Powers of city and town councils, 11-918, 11-966, 11-967, 11-986.
 10. Powers of city and town councils (continued), 11-1001, 11-1024.
 11. Ordinances—initiative and referendum, 11-1102, 11-1104, 11-1107.
 12. Contracts and franchises, 11-1202.
 13. Presentation and payment of claims—city warrants, 11-1310.
 16. Judicial powers—police courts, 11-1602.
 18. Police department, metropolitan police law, 11-1804.1, 11-1806, 11-1814, 11-1823, 11-1832, 11-1832.1, 11-1834 to 11-1837.
 19. Fire department—firemen's disability and pension fund, 11-1901, 11-1911, 11-1912, 11-1914, 11-1918 to 11-1921, 11-1925 to 11-1928, 11-1932, 11-1932.1.
 20. Fire protection in unincorporated towns—fire wardens, companies and districts, 11-2007, 11-2008, 11-2010, 11-2022 to 11-2030.
 22. Special improvement districts, 11-2201, 11-2202, 11-2204, 11-2214.1 to 11-2214.5, 11-2218, 11-2226, 11-2231, 11-2288.
 23. Municipal bonds and indebtedness, 11-2310, 11-2316.
 24. Municipal revenue bond act of 1939, 11-2402, 11-2404, 11-2414.
 32. Commission-manager form of government, 11-3215, 11-3244, 11-3248.
 34. City and county consolidated government, 11-3413, 11-3455, 11-3458.
 35. City and county consolidated government (continued), 11-3516, 11-3518, 11-3523, 11-3524.
 37. Off-street parking facilities, 11-3714, 11-3721.
 38. City or city-county planning boards, 11-3801, 11-3803, 11-3804, 11-3808, 11-3810, 11-3812, 11-3813, 11-3818, 11-3820, 11-3824, 11-3825, 11-3827, 11-3828, 11-3830, 11-3830.1, 11-3831, 11-3833, 11-3834, 11-3840, 11-3842 to 11-3848, 11-3851, 11-3853, 11-3855.
 39. Urban renewal law, 11-3901 to 11-3920.
 40. Open ditches, 11-4001 to 11-4006.
 41. Industrial development projects, 11-4101 to 11-4110.
 42. City-county building, 11-4201 to 11-4203.
 43. City-county disaster emergency tax, 11-4301 to 11-4306.

CHAPTER 1—GENERAL POWERS OF CITIES AND TOWNS

11-104. (4958) City or town, how named, general corporate powers.

Tax Sales

County acquiring tax deeds to lots, advertised them for sale but received no offer. Purchase of lots by city being authorized by city council because of hous-

ing and sanitary conditions, it had the right to sell them at varying prices, much higher than purchase price paid to county. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 501, 502.

CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

11-201. (4959) Cities and towns classified.

References

Cited in *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.

11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land. (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, or platted for parks, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however, that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly sur-

rounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty (20) days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

<p>History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1,</p>	<p>Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967.</p> <p>Amendments</p> <p>The 1959 amendment in subd. (1) de-</p>
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leted the phrase "and the inhabitants thereof" which appeared after the words "best interests of such city"; added the second paragraph of subd. (1), and changed the word "caused" to "cause" which appeared after the words "proposed to be embraced, and" in subd. (2).

The 1961 amendment inserted the first proviso in the last sentence of the first paragraph of subd. (1); and, at the end of the first paragraph of subd. (1), added "and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval."

The 1967 amendment, in subsection (1), inserted "or platted for parks" after "and alleys" near the beginning of the first paragraph; and deleted "recreational area" after "transportation" in the second paragraph; and inserted "(20)" after the written number throughout the section.

Repealing Clauses

Section 2 of Ch. 238, Laws 1959 and Sec. 2 of Ch. 217, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 238, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

Section 3 of Ch. 217, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

Constitutionality

Annexation, in the absence of a constitutional prohibition, is a political matter exclusively for the legislature to control, and, unless specifically restrained by the constitution, the legislature can authorize annexation without the consent, or even against the wishes, of the people living in the annexed corporation or territory. *Harrison v. City of Missoula*, 146 M 420, 407 P 2d 703.

Constitutionality—Class Legislation

There is no objection to class legislation pertaining to this section, since the legislature, in its discretion, by adding "if any" after the words "resident freeholders" clearly based the right to protest against annexation upon the valid distinction of residency. *Harrison v. City of Missoula*, 146 M 420, 407 P 2d 703.

Appeal

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on

appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

Burden of Proof

A first class city has the burden of determining if a majority of the resident freeholders have protested the proposed annexation. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 755.

Description of Land Annexed

In annexation proceedings by a second class city the description of the land was adequate, although it omitted township and range, where the resolution stated that the land was contiguous to the boundaries of the city and referred to the intersections of streets. *Klamm v. City of Miles City*, 138 M 65, 353 P 2d 752, 754.

Disapproval by Residents

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, 1093.

The filing of sufficient protests by resident freeholders of a first class city deprives the city council of authority to do anything except to sustain the protests and terminate the proceedings. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

If the majority of the resident freeholders of a first class city protest proposed annexation, the city is without jurisdiction to proceed with the annexation. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

Discretion of City Council

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, distinguished in 138 M 65, 67, 353 P 2d 752, 753.

If less than a majority of the resident freeholders of a first class city protest, the city may, in its discretion, annex the area in question. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

Evidence of Benefits

In action for injunctive relief against resolution of intention of city council to annex land court properly excluded all

evidence relating to benefits. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Resident Freeholder

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Resolution of Intention

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Termination of Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under subdivision (1) of this section, but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgment Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 757.

Unplatted Territory

Unplatted territory may be annexed by a second-class city. *Klamm v. City of Miles City*, 138 M 65, 353 P 2d 752, 753.

11-404. Land when deemed contiguous.

Operation and Effect

Triangle piece of unplatted land separated area sought to be annexed into two tracts of land. Although the triangular strip was a part of a much larger tract, that fact was immaterial. The only part of the land which was significant was the strip separating the area sought to be an-

nexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, then the tracts separated by it will be deemed contiguous. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1093.

CHAPTER 5—ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

11-511. Contiguous land owned by government, etc.

References

Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-616. Vacation of recorded plat.

11-602. (4981) What plat must contain.

Constitutionality

The requirement of subsection 9 of this section that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county

authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

11-614. (4993) Small and irregularly shaped tracts, etc.**Lots of Less Than Ten Acres**

The exception to the requirement that specific portions of subdivided property be set aside for public parks and playgrounds applies only to indefinitely de-

scribed tracts and not to lots surveyed for building purposes. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

11-614.1. Approval of plats before filing—by whom to be done.**References**

Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

11-616. Vacation of recorded plat. Any plat prepared and recorded as herein provided may be vacated, either in whole or in part, as provided by section 11-2803 and 11-2801, Revised Codes of Montana, 1947, and upon such vacation the title to the streets and alleys of such vacated portions, to the center thereof, shall revert to the owners of the property adjacent to such vacated portions, provided that if any pole line, pipe line or other public utility facilities are located in any such vacated street or alley at the time of the reversion of the title thereto, the owner of such public utility facilities shall have an easement over such land to continue the operation and maintenance of such public utility facilities.

History: En. Sec. 1, Ch. 200, L. 1947; amd. Sec. 1, Ch. 152, L. 1961.

Amendment

The 1961 amendment inserted the reference to section 11-2801 and added the proviso at the end of the section.

CHAPTER 7—OFFICERS AND ELECTIONS

- Section 11-710.** Qualification of mayor.
 11-713. Who eligible.
 11-714. Qualification of aldermen.
 11-715. Registration of electors.
 11-716. Qualifications of electors.
 11-725. Salaries and qualifications of mayor and aldermen.
 11-726. Salaries of police judges.
 11-728. Salary of city treasurer.
 11-729. Salary of city attorney.
 11-731. Salary of city or town clerk.

11-702. (4996) Officers of city of second and third classes.**Commissioner of Public Works**

Commissioner of public works, appointed by the mayor, being a public officer of the city, was under a duty to account

for all funds which might come into his hands as such officer, including funds of public housing projects. *City of Roundup v. Liebetrau*, 134 M 114, 327 P 2d 810, 816.

11-704. (4998) Repealed.**Repeal**

This section (Sec. 4743, Pol. C. 1895; Sec. 1, Ch. 114, L. 1915), relating to the

appointment and duties of public library trustees, was repealed by Sec. 12, Ch. 260, Laws 1967.

11-710. (5004) Qualification of mayor. No person shall be eligible to the office of mayor unless he shall be at least twenty-five (25) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which

he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words

"twenty-five" inserted "(25)"; after the words "limits of the city" inserted the words "or town" and after the words "resident of the city" inserted the words "or town or an area which has been annexed by the city or town."

11-713. (5007) Who eligible. No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city or an area which has been annexed by such town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words "not resided in the town or city" inserted the words "or an area which has been annexed by such town or city."

11-714. (5008) Qualification of aldermen. No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him, or a resident of an area which has been annexed by the city or town and placed in a ward, for at least sixty (60) days preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967.

annexed by the city or town and placed in a ward."

The 1967 amendment decreased the residency requirement for aldermen from one year to 60 days.

Amendments

The 1961 amendment after the words "so electing him," inserted the words "or a resident of an area which has been

Effective Date

Section 2 of Ch. 144, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

11-715. (5009) Registration of electors. The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided. However, when an area is annexed by a city or town after the date for registration has expired, opportunity must be provided for residents of such area to register, if otherwise qualified, for all future elections.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R. C. M. 1921; amd. Sec. 4, Ch. 76, L. 1961.

Amendment

The 1961 amendment added the last sentence.

11-716. (5010) Qualifications of electors. All qualified electors of the state who have resided in the city or town or an area which has been annexed by such city or town for six months and in the ward or an area

which has been annexed and placed in a ward for thirty days next preceding the election are entitled to vote at any municipal election, including elections involving or held under the commission form of government, commission-manager plan or other form of municipal government.

History: En. Sec. 4755, Pol. C. 1895; re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. 5010, R. C. M. 1921; amd. Sec. 5, Ch. 76, L. 1961.

Amendment

The 1961 amendment inserted the words "or an area which has been annexed by such city or town" after "resided in the city or town"; inserted the words "or an area which has been annexed and placed

in a ward" following "in the ward"; and added the final clause of the section, beginning with the words "including elections involving."

Effective Date

Section 6 of Ch. 76, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 27, 1961.

11-722, 11-723. (5016, 5017) Repealed.

Repeal

These sections (Secs. 4761, 4762, Pol. C. 1895), relating to the giving of official

bonds by public officers, were repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see secs. 6-601 to 6-608.

11-725. (5019) Salaries and qualifications of mayor and alderman. The annual salary of a mayor must be fixed by ordinance, and in a city of the first class must not exceed ten thousand dollars (\$10,000); and the annual salary of the mayor of a city of the second class must not exceed four thousand five hundred dollars (\$4,500); and the annual salary of the mayor of a city of the third class must not exceed three thousand six hundred dollars (\$3,600).

The salary of aldermen must be fixed by ordinance, and each alderman in a city of the first class may be allowed and paid a salary not exceeding one hundred fifty dollars (\$150) per month; and aldermen of cities of the second and third class may be allowed and paid a salary not exceeding seventy-five dollars (\$75) per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967.

Amendments

The 1961 amendment inserted at the beginning of the first sentence the first two clauses, which pertain to the salaries of mayors of cities over 25,000 population; inserted in the third clause of the first sentence (formerly the first clause) the words "having a population of less than twenty-five thousand (25,000) persons, according to said census"; deleted a proviso which followed the clause pertaining to aldermen of first class cities and read

"provided, that no alderman shall be paid for more than five (5) days' service during any one (1) month"; and inserted in the final clause of the first sentence the words "of second and third class cities."

The 1963 amendment increased salaries of mayors, in cities of the second class, from \$3,000 to \$3,200, and in cities of the third class, from \$1,500 to \$1,700; substituted the phrase "fifteen dollars (\$15.00) per diem for each day of session, to be fixed by ordinance" for the phrase "twelve dollars (\$12.00) per diem to be fixed by ordinance, for each day of session held by city council" near the end of the first sentence; increased per diem of aldermen of cities of the second and third class from \$12 to \$14; and increased compensation of town mayor and alderman from \$2 to \$5 per meeting.

The 1965 amendment inserted "must be fixed by ordinance, and in" after "salary of a mayor" near the beginning of the

section; increased the maximum salaries for mayors from \$7,200 to \$8,400 in cities of over 50,000, from \$6,000 to \$7,200 in cities of 25,000 to 50,000, from \$5,400 to \$6,000 in first class cities of under 25,000, from \$3,200 to \$3,600 in second class cities, and from \$1,700 to \$3,000 in third class cities; increased aldermen's per diem from \$15 to \$20 in first class cities and from \$14 to \$16 in second and third class cities; increased mayors' and aldermen's compensation for meetings from \$5 to \$15; and reduced the number of meetings for which mayors and aldermen may be compensated from three to two per month.

The 1967 amendment rewrote this section. Prior to amendment it read, "The annual salary of a mayor must be fixed by ordinance, and in a city with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than eight thousand four hundred dollars (\$8,400.00); the annual salary of a mayor of a city with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the said census, shall be not more than seven thousand two hundred dollars (\$7,200.00); the annual salary of a mayor of a city of the first class, having a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed

six thousand dollars (\$6,000.00); and the annual salary of a mayor of a city of the second class must not exceed three thousand six hundred dollars (\$3,600.00); and the annual salary of the mayor of a city of the third class must not exceed three thousand dollars (\$3,000.00); and each alderman in a city of the first class may be allowed and paid not exceeding twenty dollars (\$20.00) per diem for each day of session, to be fixed by ordinance; and aldermen of cities of the second and third class may be allowed and paid not exceeding sixteen dollars (\$16.00) per diem for each day of session, to be fixed by ordinance, but no alderman of second and third class cities shall be paid for more than two (2) days' service during any one (1) month. The council of any town may by ordinance set compensation for a mayor and alderman at fifteen dollars (\$15.00) per meeting, but in no event shall they be paid to exceed two (2) meetings per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town."

Effective Date

Section 2 of Ch. 224, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

11-726. (5020) Salaries of police judges. The annual salary and compensation of police judges must be fixed by ordinance.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965; amd. Sec. 1, Ch. 186, L. 1967.

Amendments

The 1961 amendment inserted in the first sentence the clauses pertaining to cities of over 50,000 and cities of 25,000 to 50,000; substituted "all other cities of the first class" for "a city of the first class" in the first sentence; and inserted "said salary and compensation" before "must not exceed" in three different places in the first sentence.

The 1965 amendment increased the maximum annual salary and compensation from \$5,400 to \$6,000 in cities of over 50,000, from \$5,100 to \$5,400 in cities of 25,000 to 50,000, from \$4,200 to \$4,500 in other first class cities, from \$2,100 to \$2,400 in second class cities, and from \$1,000 to \$1,200 in third class cities.

The 1967 amendment deleted "and in a city of the first class having a population of more than fifty thousand (50,000)

persons according to the last federal census, must not exceed, for all services rendered six thousand dollars (\$6,000.00); and in cities of the first class with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation of police judges must not exceed, for all services rendered, five thousand four hundred dollars (\$5,400.00); in all other cities of the first class said salary and compensation must not exceed, for all services rendered, four thousand five hundred dollars (\$4,500.00); and in a city of the second class said salary and compensation must not exceed two thousand four hundred dollars (\$2,400.00); and in a city of the third class said salary and compensation must not exceed one thousand two hundred dollars (\$1,200.00); and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must

receive no compensation whatever; provided, however, that none of the provisions of this act shall affect cities oper-

ating under the commission form of government" at the end of the section.

11-728. (5022) Salary of city treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967.

Compiler's Note

Laws 1961, Ch. 179, Sec. 3 purported to amend this section but made no change therein. For 1961 text, see parent volume.

Amendments

The 1963 amendment increased salaries of treasurers in cities of the first class from \$4,500 to \$5,000, in cities of the second class from \$3,100 to \$3,400, in cities of the third class from \$1,500 to \$1,800, and in towns from \$1,200 to \$1,500.

The 1965 amendment increased the maximum annual salary and compensation from \$5,000 to \$6,000 in first class cities, from \$3,400 to \$3,600 in second class cities, from \$1,800 to \$2,400 in third class cities, and from \$1,500 to \$1,800 in towns.

The 1967 amendment deleted "(except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in

addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed six thousand dollars (\$6,000.00), in cities of the second class must not exceed thirty-six hundred dollars (\$3,600.00), and in cities of the third class it must not exceed twenty-four hundred dollars (\$2,400.00), and in towns it must not exceed eighteen hundred dollars (\$1,800.00); provided, however, that where a city of the third class, or a town shall own and operate a public utility or utilities such as water supply, waterworks, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safekeeping of the revenues derived from such public utilities shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine" at the end of the section.

Repealing Clause

Section 2 of Ch. 189, Laws 1967 repealed all acts and parts of acts in conflict therewith.

11-729. (5023) Salary of city attorney. The annual salary and compensation of the city attorney must be fixed by ordinance.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967.

Amendments

The 1961 amendment inserted the clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; and in the clause pertaining to other first class cities, inserted the words "and the annual salary and compensation of city attorneys in all other."

The 1965 amendment increased the maximum annual salary and compensation

from \$5,400 to \$6,000 in cities of over 50,000, from \$5,100 to \$5,400 in cities of 25,000 to 50,000, from \$4,500 to \$5,100 in other first class cities, from \$3,000 to \$3,600 in second class cities, and from \$1,800 to \$2,400 in third class cities.

The 1967 amendment deleted after "ordinance" at the end of this section "and must not exceed, in cities of the first class having a population in excess of fifty thousand (50,000) persons according to the last federal census, six thousand dollars (\$6,000.00), and in cities of the first class having a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons according to the last federal census, the annual salary and compensation must not exceed fifty-four hundred dollars (\$5,400.00); and the annual salary

and compensation of city attorneys in all other cities of the first class must not exceed five thousand one hundred dollars (\$5,100.00), and in cities of the second class must not exceed three thousand six hundred dollars (\$3,600.00), and in cities of the third class must not exceed two thousand four hundred dollars (\$2,400.00), which compensation shall be in

full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him."

Repealing Clause

Section 2 of Ch. 155, Laws 1967 repealed all acts and parts of acts in conflict therewith.

11-731. (5025) Salary of city or town clerk. The annual salary and compensation of the city or town clerk must be fixed by ordinance.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967.

Amendments

The 1961 amendment inserted in the first sentence the two clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; inserted the words "with a population of less than twenty-five thousand (25,000) persons, according to said census" in the clause pertaining to other first class cities; and inserted the words "the annual salary and compensation" in the clause pertaining to second class cities.

The 1965 amendment increased the maximum annual salary and compensation from \$6,400 to \$7,200 in cities of over 50,000, from \$4,200 to \$4,800 in second class cities, and from \$2,700 to \$3,000 in third class cities.

The 1967 amendment deleted after "ordinance" at the end of this section "and in cities with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than seven thousand two hundred dollars (\$7,200.00); in cities with a population of not less than twenty-five thousand (25,000) and not more than fifty

thousand (50,000) persons, according to the last federal census, the annual salary and compensation must not exceed six thousand dollars (\$6,000.00); in cities of the first class with a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand four hundred dollars (\$5,400.00); in cities of the second class the annual salary and compensation must not exceed four thousand eight hundred dollars (\$4,800.00). In cities of the third class the compensation must not exceed three thousand dollars (\$3,000.00), and in towns must not exceed one thousand eight hundred dollars (\$1,800.00); provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government."

Repealing Clauses

Section 6 of Ch. 179, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Section 2 of Ch. 156, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 7 of Ch. 179, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 6 of Ch. 158, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section 11-918. Licensing, taxing and regulation.

11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-967. Sidewalks, foot pavements, curbs and gutters.

11-986. Acquisition of landing fields and parking areas—jurisdiction.

11-901. (5039) Powers of city councils.

Water Main Service Charge

Under its power to provide for the general welfare of its inhabitants, a city may provide for a flat rate charge to

property owners for services of its employees in tapping into the water main. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

Cross-References

Interlocal co-operation agreements, secs. 16-4901 to 16-4904.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025; *City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211.

11-902. (5039.1) Levy and collection of taxes.**Cross-Reference**

Temporary authority for emergency tax levy by city council, see 84-3805 note.

11-903. (5039.2) Licenses—requirements.**Ordinance Required**

In the absence of a licensing ordinance the city is powerless to attempt to exact

license fees or to regulate the operation of any business. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

11-904. (5039.3) Issuing licenses.**Abuse of Discretion**

City council could not, at its discretion, deny developers a license to operate a trailer park, where developers had complied with the city's health ordinances, council disregarded the findings of the city's administrative officers, and developers had begun construction of the park before the area had been rezoned. State ex rel. Bennett v. Stow, 144 M 599, 399 P 2d 221.

Ordinance Required

Where the city's licensing ordinance did not include the operation of a call office for dry cleaning, the city was without jurisdiction to arrest the operator of such an establishment for conducting business without a license. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

11-905. (5039.4) Building or hiring and lighting and heating, etc.**Cross-Reference**

Building specifications for accommoda-

tion of handicapped persons, secs. 69-3701 to 69-3719.

11-917. (5039.14) Water regulation.**Cross-Reference**

Flood control projects of cities and towns, secs. 89-3301 to 89-3313.

11-918. (5039.15) Licensing, taxing and regulation. The city or town council has power: To license, tax, and regulate auctioneers, peddlers, pawnbrokers, secondhand and junk shops: motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed: drivers, porters, pool halls and soft drink parlors, billiard tables, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

History: En. subd. 16, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 192, L. 1965.

Amendment

The 1965 amendment inserted "motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed."

11-950. (5039.47) Penalties for violation of ordinances, etc.**Invalid Ordinance**

A town ordinance which in effect adopted all state laws defining misdemeanors

and made them town ordinances, with penalties limited as provided by this section, was invalid as containing more than

one subject in violation of the prohibition set forth in section 11-1102. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 865.

11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances. The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the taxable property" being used herein in the same sense as in section 6 of article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) to (4). * * * [Subdivisions (2) to (4), same as parent volume.]

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963. See also history of Sec. 11-901.

Amendments

The 1959 amendment in subd. (1) added the phrase "sewage treatment and disposal plants" preceding the word "bridges" and the phrase "sewage and disposal plant" following the words "water supply."

The 1963 amendment inserted in subd. (1) the words "building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

Repealing Clause

Section 2 of Ch. 38, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 158, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Charge for Tapping Water Mains

Subdivision (4) of this section empowers the city to establish a flat rate schedule for tapping water mains located en-

tirely within the public right of way, where the labor and materials are furnished by the city. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

11-967. (5039.64) Sidewalks, foot pavements, curbs and gutters. The city or town council has power: To regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof, and the city or town may pay for the same, and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 157, L. 1967. See also history of Sec. 11-901.

"pavements" wherever found in this section, and made minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 157, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1967 amendment inserted "curbs, gutters, or any combination thereof" after

11-981. (5039.78) Securing water supply.**References**

Cited in *Leischner v. Knight*, 135 M 109, 337 P 2d 359, 361.

11-986. (5039.83) Acquisition of landing fields and parking areas—jurisdiction. The city or town council has power: To acquire by lease, gift, purchase or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to acquire by lease, gift, or purchase lots or lands for parking areas for automobiles within the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands where such lots or lands, or any portion thereof, are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965. See also history of Sec. 11-901.

structures on said lots or lands for the purpose of parking automobiles but shall be permitted to surface or semi-surface such lots or lands for parking purposes only."

Repealing Clause

Section 2 of Ch. 27, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment deleted from the end of the section a proviso reading, "provided that no city or town shall erect

11-987. (5039.84) Power to license and regulate, etc.**References**

State ex rel. *City of Libby v. Haswell*, — M —, 414 P 2d 652.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1001. (5040.1) **Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.** (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any person, factory, or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system to furnish water to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved by the public service commission, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

(3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words in subd. (1).

Amendment

The 1961 amendment substituted the words "at reasonable rates filed by the city or town council and approved by the public service commission" for the words "at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town" in subd. (1) and for the words "at such rates as to the said city council may

seem just and equitable" in subd. (2); deleted from subd. (1) the words shown in brackets above; and inserted near the end of subd. (1) the words "or from any existing water line of such city or town located outside of the corporate limits of such city or town."

Repealing Clause

Section 2 of Ch. 194, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 194, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

11-1014. (5054) Ayes and noes must be called, etc.**Failure To Record**

Town could not deny the validity of a sewage project contract due to an alleged technical defect in failing to record in minutes of town council the aye and noe vote on the approval of the contract as required by this section where the town in all of its affirmative acts recog-

nized the contract. *State Engineering Service, Inc. v. Town of Kevin*, — M —, 420 P 2d 433, 435.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities, and towns are hereby authorized upon approval by two-thirds ($\frac{2}{3}$) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective administrative and governing bodies are authorized to pay as part of the officers and employees salary one-half ($\frac{1}{2}$) of the total premium therefor; provided, however, that such payment shall not exceed seven dollars and fifty cents (\$7.50) per month for each officer and employee; and further provided that any such premiums shall not be line itemed as group insurance premiums in any budgets for any state of Montana departments or their subdivisions, and all premiums necessary to pay the cost of such group insurance programs as herein allowed shall be negotiated with the employees or their representatives, and when approved, the total cost necessary to fund such program, within the \$7.50 recommendation, shall be taken from any salaries or salary raises of those employees to be covered and as provided for in any budget for any year of any biennium.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967.

tive and" before "governing bodies"; and added the second proviso.

Amendments

The 1965 amendment increased the maximum monthly payment prescribed in the first proviso from \$5.00 to \$7.50.

The 1967 amendment added "All departments, bureaus, boards, commissions and agencies of the state of Montana, and" before "all counties" at the beginning of this section; inserted "of each such department, bureau, board, commission, agency, county, city and town" before "to enter into"; inserted "administra-

Duration of Act

Section 2 of Ch. 200, Laws 1967 provided "The provisions of this act as they relate to group insurance coverage for all departments, bureaus, boards, commissions and agencies of the State of Montana shall be effective until June 30, 1971 or until further extended or limited by subsequent legislative acts."

Repealing Clause

Section 3 of Ch. 200, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

- Section 11-1102. Ordinances—how prepared.
 11-1104. Initiative in cities—petition.
 11-1107. Referendum petition.

11-1102. (5056) Ordinances—how prepared. (1) All ordinances, by-laws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed.

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code, or part of a code, is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code, or part of a code, adopted.

(4) Ordinances take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967.

Amendments

The 1967 amendment divided the previous text into new subsections (1) and (4); inserted subsections (2) and (3); and substituted "Ordinances" for "and" at the beginning of subsection (4).

One Subject

A town ordinance which, in effect,

adopted all state laws defining misdemeanors and made them town ordinances, was invalid as violating the prohibition against passage of an ordinance containing more than one subject. *Town of White Sulphur Springs v. Voise*, 136 M 1, 343 P 2d 855, 865.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

11-1104. (5058) Initiative in cities—petition. (1) Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty (60) days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county

in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases.

(3) to (6). * * * [Same as parent volume.]

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967.

Repealing Clause

Section 2 of Ch. 126, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1967 amendment increased from 8 to 15 per cent the number of legal voters required to present an ordinance by petition to a city or town council in subsection (1), inserted the word "be" after "a suit may" in the first sentence in subsection (2), and inserted arabic numbers after the written numbers throughout the section.

Ordinances Not Subject to Initiative

Where city council, in enacting an ordinance, was simply executing an already existing law, the repeal of the ordinance was not subject to initiative. *City of Billings v. Nore*, — M —, 417 P 2d 458, 463.

11-1106. (5060) No ordinance to be effective until thirty days, etc.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786,

793; *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 757.

11-1107. (5061) Referendum petition. During the thirty (30) days following the passage of any ordinance or resolution, ten per cent (10%) of the qualified electors of the city or town may, by petition addressed to the council and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town.

History: En. Ch. 167, L. 1907; re-en. Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1967.

cent (10%)" for "five per cent" before "of the qualified electors."

Amendments

The 1967 amendment inserted "(30)" before "days," and substituted "ten per

Repealing Clause

Section 2 of Ch. 94, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—CONTRACTS AND FRANCHISES

Section 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202. (5070) Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars (\$1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in

which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963.

Amendments

The 1959 amendment, in the first paragraph, substituted the phrase "once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days" for the phrase "twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen

(15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days."

The 1963 amendment inserted "or for the construction of any building" near the beginning of the first paragraph.

Repealing Clause

Section 2 of Ch. 220, Laws 1959 repealed all acts and parts of acts in conflict therewith.

References

Cited in *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 250.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS

Section 11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1302. (5079) Allowance and payment of claims—cash basis.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in

the city to purchase property together with the building thereon, lease payments were forms of indebtedness within section 6, article XIII of the constitution limiting indebtedness that may be incurred by city. *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 251.

11-1305. (5080) Defective highways and public works—notice, etc.

Notice to City of Defective Condition

In an action by a pedestrian against a municipality for injuries sustained in a fall on a sidewalk, a telephone conversation by the owner of a business adjacent to the site of the fall, to the city engineer's office to the effect that he reported a defect in the walk to the person who answered the phone, was admissible and the absence of proof that the city clerk made a record of the report did not deny

the right of the pedestrian, having carried the burden of proof, to recover damages. *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880.

Notice to the city may be proved "by any method through competent evidence." *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880, 883.

In an action for personal injuries resulting from fall on defective sidewalk, notice to a former street employee of the

city, who had no authority to cause repairs to be made and was not chargeable with responsibility for ascertaining and reporting to those having authority to repair, was not notice to the city. *Morris v. City of Deer Lodge*, 140 M 157, 369 P 2d 30, 32.

Since this section does not require that actual notice of a defect be pleaded, but does require that it be shown, notice is a matter to be proven at trial. *Floyd v. City of Butte*, — M —, 412 P 2d 823.

Operation and Effect

A cause of action for damage to property allegedly caused by the insufficiency of a storm sewer to handle water from a heavy rain was barred by the failure to give notice to the city within 60 days. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33.

Purpose

The purpose of this section is to give

knowledge of the injury to the city authorities so that the expense of litigation may be avoided, not alone that the city may have an opportunity to investigate, and it is not sufficient that city officers had notice of the defect. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33, 34.

When Notice Not Necessary

Where municipality has the duty to inspect sewer systems under its control and supervision, it becomes chargeable with notice of what a reasonable inspection would disclose, so that this section, requiring notice, was not applicable where landowner sought injunctive relief against municipality where faulty sewer was undermining his building. *Floyd v. City of Butte*, — M —, 412 P 2d 823.

References

Cited in *Big Head v. United States*, 166 F Supp 510, 515.

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient money to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town

treasurer to make such investments. Interest earned from such investments shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963.

Title of Act

An act to provide that a city or town may invest moneys from funds for which there is no immediate demand, in the purchase of outstanding city or town warrants, providing the warrants that may be so purchased, and the manner in which such warrants shall be purchased, and repealing all acts or parts of acts in conflict herewith.

Amendment

The 1963 amendment designated the original section as subsection (1); inserted the words "Except as provided in subsection (2) of this section" at the beginning of such subsection (1); and added subsection (2).

Repealing Clauses

Section 2 of Ch. 31, Laws 1961 and Sec. 2 of Ch. 10, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

11-1409. (5083.8) Emergency expenditures—Notice and hearing, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 16—JUDICIAL POWERS—POLICE COURTS

Section 11-1602. Jurisdiction of police courts.

11-1602. (5088) Jurisdiction of police courts. The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit larceny.
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.
4. Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.
5. Possession of beer or liquor by persons under the age of twenty-one (21) years in violation of section 94-35-106.2, R.C.M. 1947.
6. Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-35-106, R.C.M. 1947.

Said police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5038, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967. Cal. Pol. C. Sec. 4426.

Amendments

The 1967 amendment inserted the arabic

numbers after the written words in subsection 3, and added subsections 5 and 6.

Repealing Clause

Section 2 of Ch. 93, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

- Section 11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen.
- 11-1806. Presentation and trial of charges against policemen.
 - 11-1814. Qualifications of policemen.
 - 11-1823. Fund for payment of officers on reserve lists—tax levy.
 - 11-1832. Minimum wage of police in first and second class cities.
 - 11-1832.1. Basis in computing added salary.
 - 11-1834. Annual state payments to municipality with police department.
 - 11-1835. State payments to come from motor vehicle insurance premium tax.
 - 11-1836. Credit of payments to reserve fund of police retirement system—annual report of board.
 - 11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer.

11-1801. (5095) Police department.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

Liability of City for Tortious Act of City Policeman

A city is not liable for tortious acts of a city policeman committed while acting within the course and scope of his employment in enforcing the laws and ordinances of a city. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 878.

Mandatory as to First and Second Class Cities

Since provisions of the Metropolitan Police Law are mandatory on cities of the

first and second class, where newly passed city ordinance required police officers to serve continuously on the active list for not less than thirty years before being eligible for retirement, the ordinance was in direct conflict with sections 11-1818 and 11-1821 and invalid. *Bartels v. Miles City*, 145 M 116, 399 P 2d 768.

Operation and Effect

A municipality has the duty to maintain an adequate police force and, it follows, the duty to preserve order, and in performing that duty the municipality is performing a governmental function. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 879.

As to cities of the first and second classes, the metropolitan police law is mandatory, but, as to other cities and towns, it is permissive only. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804. (5098) Police commission required in first and second, etc.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen. It is hereby made the duty of the mayor of any city of the third class which does not have a police commission, upon the written request of any policeman who has been employed by said city as such for a period of ten years or more, to appoint a police commission in accordance with the provisions of section 11-1804, Revised Codes of Montana, 1947, which commission shall then proceed under the provisions of section 11-1806, Revised Codes of Montana, 1947, before such policeman can be discharged or terminated from his employment as a policeman.

History: En. Sec. 1, Ch. 199, L. 1959.

Title of Act

An act to make it the duty of the mayor of any city of the third class which does

not have the police commission, upon the written request of a policeman employed by the city as such for ten years or more to appoint a police commission in accordance with section 11-1804, Revised Codes

of Montana, 1947; providing for procedure as set forth in section 11-1806, Revised Codes of Montana, 1947; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 199, Laws 1959 re-

pealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

11-1806. (5100) Presentation and trial of charges against policemen.

(1) to (9). * * * [Subdivisions (1) to (9), same as parent volume.]

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten (10) days in any one (1) month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959.

Amendment

The 1959 amendment in subd. (10) substituted the words "such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of

the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department" following the words "in any one (1) month," for the words "without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine."

Repealing Clause

Section 2 of Ch. 28, Laws 1959, repealed all acts and parts of acts in conflict therewith.

11-1814. (5106) Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; re-en. Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959.

Amendment

The 1959 amendment in the first paragraph deleted the words "but this restriction shall not apply to any member of any present police department," which appeared after the words "forty years of age," and in the second paragraph substituted the words "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months" for the words "and have

been a resident of the city or town in which he is appointed at least two years."

Repealing Clause

Section 2 of Ch. 29, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

11-1818. (5108.2) Police reserves—qualifications.

Conflicting Ordinances

Where plaintiff had served twenty years of continuous service on the active list of the city police force and was ready for retirement, newly passed city ordi-

nance requiring thirty years of continuous active service for retirement was in conflict with this section and section 11-1821 and invalid. *Bartels v. Miles City*, 145 M 116, 399 P 2d 768.

11-1821. (5108.5) Payment of police reserves.

Conflicting Ordinances

Where plaintiff had served twenty years of continuous service on the active list of the city police force and was ready for retirement, newly passed city ordinance requiring thirty years of continuous active service for retirement was in conflict with this section and section 11-1818 and invalid. *Bartels v. Miles City*, 145 M 116, 399 P 2d 768.

Meaning of "Age"

Since most cities of the first and second class had interpreted subsection (1) of this section to allow a police officer to receive a pension after twenty years of active service, court considered this in determining that the word "age" in subsection (1) referred to time of service, rather than retirement age alone. *Bartels v. Miles City*, 145 M 116, 399 P 2d 768.

11-1823. (5108.7) Fund for payment of officers on reserve lists—tax levy. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed two (2) mills may be made until such returns from the first mill levy be sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959.

paragraph raised the additional levy authorized from one mill to two mills.

Repealing Clause

Section 2 of Ch. 8, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 Amendment, in the second

11-1824. (5108.8) Cities under second class may come within, etc.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1832. (5108.16) Minimum wage of police in first and second class cities. That from and after July 1, 1967, there shall be paid to each duly confirmed member of the police department of cities of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours' work, of at least four hundred dollars (\$400) minimum per month for the first year of service, and thereafter of at least four hundred dollars (\$400) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred dollars (\$400) for each additional year service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967.

Amendments

The 1967 amendment substituted "1967" for "1957" after "July 1"; and substituted "four hundred dollars (\$400)" for "three hundred and fifty dollars (\$350.00)" throughout the section.

Annual Increase

Although the wages provided for by the 1957 amendment are payable only after July 1, 1957, this does not mean that the legislature did not intend to consider service prior to that date in computing what the wages shall be. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115.

In enacting Laws of 1957, chapter 28, amending this section, the legislature intended to recognize the status of police officers according to the length of service in the past and to reward the more ex-

perienced by paying them a higher wage scale. The legislature drew no distinction between years of service performed before July 1, 1957, and those performed after that date. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1116.

Under this section as amended by Laws of 1957, chapter 28, added wages must be added to the actual current salary and not to the minimum of \$350 a month. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115, decided prior to enactment of section 11-1832.1 and explained in 139 M 343, 345, 363 P 2d 720.

Where a policeman's salary for one fiscal year was a stated amount which was calculated to include the longevity to which he was entitled, his "actual current salary" was the amount received other than for longevity, and the amount to which he is entitled for the next year is computed by adding his total longevity to the "actual current salary" rather than to the stated amount. *State ex rel. Raw v. City of Helena*, 139 M 343, 363 P 2d 720, 722.

11-1832.1. Basis in computing added salary. Added salary for years of service will be based on the base monthly salary as established in this act and not on the actual current salary.

History: En. Sec. 2, Ch. 266, L. 1967.

Title of Act

An act amending section 11-1832, R. C.

M. 1947, relating to minimum wages of policemen of cities of the first and second class, to require that such wages be four hundred dollars (\$400).

11-1833. (5108.17) Application of act.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025.

11-1834. Annual state payments to municipality with police department. At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant in an amount equal to the sum paid to

that city or town for the use and benefit of its fire department relief association pursuant to the provisions of section 11-1919, R. C. M. 1947, as amended.

History: En. Sec. 1, Ch. 261, L. 1965.

Title of Act

An act to provide for annual payments from the premium tax collected on motor

vehicle insurance to every city or town having a police department; providing how such payments shall be expended by the cities or towns.

11-1835. State payments to come from motor vehicle insurance premium tax. The payment provided for by section 1 [11-1834] of this act shall be paid from the premium tax collected on motor vehicle insurance sold in this state to insure against the following risks: motor vehicle physical damage; property damage; bodily injury. Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

History: En. Sec. 2, Ch. 261, L. 1965.

11-1836. Credit of payments to reserve fund of police retirement system—annual report of board. Every city or town, having a police retirement system established under the provisions of the metropolitan police law, shall deposit said payment to the credit of the police reserve fund of such city or town. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund.

History: En. Sec. 3, Ch. 261, L. 1965.

11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer. Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all funds received pursuant to this act.

History: En. Sec. 4, Ch. 261, L. 1965.

Effective Date

Section 5 of Ch. 261, Laws 1965 read "This act is effective on June 30, 1967."

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

- Section 11-1901.** Department to be established—application of chapter—mutual aid agreements.
- 11-1911. Source of fund.
- 11-1912. Tax levy for fund.
- 11-1914. Duties of trustees—investment of surplus funds.
- 11-1918. Reports of insurers.
- 11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.
- 11-1920. Estimate of payments.
- 11-1921. State treasurer to pay warrants.
- 11-1925. Pensions to retired firemen.
- 11-1926. Disability pension.
- 11-1927. Pensions to widows and orphans.

- 11-1928. Use of disability and pension fund of fire department relief association.
 11-1932. Minimum wages of firemen in cities of first and second class.
 11-1932.1. Basis in computing added salary.

11-1901. (5109) Department to be established—application of chapter—mutual aid agreements. (a) There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this chapter provided, which shall in all respects be applicable to and shall govern and control fire departments in every such city or town organized under whatever form of municipal government save and except where this act is in conflict with the commission form of government, provided for in sections 11-3101 to 11-3137, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

(b) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Councils or commissions of incorporated municipalities may enter such agreements with the proper authority of:

- (1) other incorporated municipalities
- (2) fire districts
- (3) unincorporated municipalities
- (4) state agencies which have fire protection services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965.

Amendment

The 1965 amendment designated the former provisions as subd. (a) and added subd. (b).

11-1902. (5110) Fire department to consist of what, etc.

Conduct Unbecoming a Fire Chief

Charges of personal conduct unbecoming a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated, took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the behavior, or lack of good behavior set forth in this section. State ex rel. Burns v. City of Livingston, 144 M 248, 395

P 2d 971, 980. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

11-1903. (5111) Powers of mayor or manager to suspend firemen.

Conduct Unbecoming a Fire Chief

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. State ex rel. Burns v. City of Livingston,

144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Discharge without Suspension

Where fire chief was on sick leave, it was not necessary for the mayor to suspend him as a condition precedent to filing formal charges against him or hold-

ing a hearing thereon. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 974. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

Hearing of Charges

Charges of personal conduct unbecoming a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated, took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the

behavior, or lack of good behavior set forth in section 11-1902. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 980. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

The three charging members of fire and police committee were not disqualified from sitting with city council to hear charges against fire chief since the council under this section had exclusive jurisdiction to hear the charges. State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 979. (Dissenting opinion, 144 M 248, 395 P 2d 971, 980.)

11-1911. (5118) Source of fund. The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part paid member of said fire department relief association amounting to six per cent (6%) of his regular monthly salary, the proceeds of a tax levy as provided by section 11-1912, R.C.M. 1947, and all moneys received from the state of Montana as provided for by section 11-1919, R.C.M. 1947, and the interest of any portion of such fund.

Any such paid or part paid fireman shall be entitled to a return, in lump sum, without interest, of all monthly contributions made by him to such funds, within sixty (60) days of his permanent separation from service in the fire department of such city, town or municipality, except separation by reason of retirement, death or disability, which would otherwise qualify such separated fireman, his widow or orphans, to benefits or allowances from such fire department relief association.

History: En. Sec. 2, Ch. 71, L. 1907; re-en. Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R. C. M. 1921; amd. Sec. 2, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967.

graph, substituted "six per cent (6%)" for "three (3) per cent" after "amounting to"; inserted "R. C. M. 1947" after "section 11-1912" and "section 11-1919"; substituted "such" for "said" before "fund"; and added the second paragraph.

Amendments

The 1967 amendment, in the first para-

11-1912. (5119) Tax levy for fund. For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special

tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be not less than one (1) mill nor more than four (4) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of said city, town or municipality; and said special tax levy shall be an amount sufficient as will provide a growth per year in such fire department relief association's fund, considering all sources of income to such fund and the payment of obligations out of such fund, in an amount equal to the sum produced by one (1) mill levied on the taxable valuation of all the taxable property in said city, town or municipality.

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city, town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, the tax levy shall be such fractional part of one (1) mill as will produce sufficient revenue to cause the fire department relief association's disability and pension fund to be more than two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed four (4) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967.

Amendments

The 1959 amendment in subd. 1 deleted the words "greater than one-half of one per centum ($\frac{1}{2}$ of 1%) and" which appeared after the words "association's fund is"; substituted "two (2) mills" for "one (1) mill" each time it appears; deleted former subd. 2, for text of which see parent volume, and renumbered old subd. 3 as subd. 2.

The 1965 amendment inserted a new subd. 2; renumbered former subd. 2 as 3; and made a minor change in phraseology in subd. 1.

The 1967 amendment substituted "two per centum (2%)" for "one per centum (1%)" wherever found in the first paragraph; substituted "four (4)" for "two (2)" before "mills on the dollar" in subd. 3; and rewrote subds. 1 and 2, which read, prior to amendment, "1. Whenever the total amount of a fire department relief association's fund is less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be two (2) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of the said city, town or municipi-

pality; provided, however, if the assessment of a two (2) mill tax levy in one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the mill tax levy shall be such fractional part of two (2) mills as will produce a sufficient amount of revenue as will bring the total amount of the said fire department relief association's disability and pension fund to an amount equal to one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality." and "2. Whenever the total amount of a fire department relief association's fund is less than one-half of one per centum ($\frac{1}{2}$ of 1%) of the taxable valuation of all taxable property within the said city, town or municipality, the special tax levy shall be three (3) mills on each dollar of taxable valuation of all taxable property

assessed for taxes within said city, town or municipality; provided, however, that if the assessment of a three (3) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise the tax levy shall be two (2) mills, as provided in the last preceding paragraph and such fractional part of one (1) mill as will produce a sufficient revenue as will cause the fire department relief association's disability and pension fund to equal one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality."

Repealing Clause

Section 2 of Ch. 107, Laws 1959 repealed all acts or parts of acts in conflict therewith.

11-1914. Duties of trustees—investment of surplus funds. The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: "Property of the ----- Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

History: En. Sec. 5, Ch. 71, L. 1907; re-en. Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963.

Amendment

The 1963 amendment inserted "in any time or saving deposits" in the third sentence.

11-1915. (5123) Benefits, allowed for, how allowed, and how paid.

History: En. Sec. 7, Ch. 71, L. 1907; re-en. Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R. C. M. 1921; amd. Sec. 6, Ch. 58, L. 1927; amd. Sec. 3, Ch. 208, L. 1967.

Compiler's Notes

Laws 1967, Ch. 208 amended this section but made no change therein. For section, see parent volume.

11-1918. (5126) Reports of insurers. The commissioner of insurance shall furnish to each insurer authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919 for its annual statement, a list of all such incorporated cities or towns, and each insurer shall report therein the amount of the fire portion of the direct premiums, after deduct-

ing cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurer authorized to effect insurance on risks enumerated in subsection 2 of section 11-1919.

History: En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955; amd. Sec. 1, Ch. 184, L. 1959.

Amendment

The 1959 amendment substituted the word "insurer" for the words "insurance company" each time they appear and substituted the reference "subsection 2 of section 11-1919" for the reference "paragraph

1 of section 40-1409" each time it appeared.

Repealing Clause

Section 2 of Ch. 184, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 184, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

11-1919. (5127) State auditor to pay fire department relief association out of license fees collected from insurance companies. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part paid firemen.

1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancella-

tions and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars (\$100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars (\$100).

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915, re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967.

Amendments

The 1959 amendment made numerous changes in this section and added subsection 2. For section prior to amendment see parent volume.

The 1963 amendment substituted "the fire portion of the direct premiums after deducting cancellations and return premiums" for "premiums" in the preliminary paragraph of subsection 1, and for "all of

the taxes on premiums" in subd. 1 (a); and deleted the words "on all premiums collected" which followed "assessed and collected" in the latter part of subd. 1 (a).

The 1967 amendment added the first paragraph, and inserted "except cities or towns of the first or second class" after "city or town" in subsection 1 and subd. 1(a).

Repealing Clause

Section 2 of Ch. 183, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 183, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

11-1920. (5127.1) Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1953.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

11-1921. (5128) State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this act, to pay to the treasurer of any such city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R. C. M. 1921; amd. Sec. 10, Ch. 58, L. 1927; amd. Sec. 70, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "a warrant drawn pursuant to this act" for

"said warrant of the state auditor" and "moneys in the earmarked revenue fund dedicated for such purpose" for "the fund known as the disability and pension fund of the fire department relief association as by law designated."

11-1925. (5132) Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such a fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 94, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 203, L. 1967.

Amendments

The 1963 amendment inserted the next to last sentence in the first paragraph.

The 1967 amendment deleted a former second sentence of the first paragraph, which read "Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided, that no increase shall be effected as will increase the said 'service pension' to an amount

in excess of a sum equal to one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality."

11-1926. (5133) Disability pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967.

Amendments

The 1963 amendment deleted from the former second sentence a proviso reading, "provided further that no member of said association shall be entitled to receive said 'disability pension' so long as he may be receiving an allowance or award under the Montana workmen's compensation act"; inserted the next to last sentence; and made a minor change in phraseology.

The 1967 amendment deleted a former second sentence, which read: "Provided, such association may at any time, by two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said 'disability pension' whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; Provided further, that no increase shall be effected as will increase the said 'disability pension' to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly salary last received by the member; Provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality."

DECISIONS UNDER FORMER LAW

Workmen's Compensation Proviso Unconstitutional

The provisions of this section clearly impair an obligation of contract and must be declared unconstitutional insofar as they prohibit a fireman or his widow or orphan from receiving payments from the

disability and pension fund if they are also receiving payments under the Workmen's Compensation Act (section 92-101 et seq.). State ex rel. Evans v. Fire Department Relief Assn., 138 M 172, 355 P 2d 670, 672.

11-1927. (5134) Pensions to widows and orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member

of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967.

Amendments

The 1963 amendment inserted the former third sentence (establishing a pension increase for elective additional service), and made a minor change in phraseology.

The 1967 amendment deleted "in line of duty" after "suffered a sickness or injury" in the first sentence; deleted a former second sentence which read "Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said pension whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided, that no increase shall be effected as will increase the said pension in an amount

in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by the deceased member; provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality"; and made a minor change in punctuation.

Separability Clause

Section 4 of Ch. 56, Laws 1963 read "If any clause, sentence, section, paragraph, or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid and inoperative."

11-1928. (5135) Use of disability and pension fund of fire department relief association. Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.
2. A pension to a member who has become permanently maimed or disabled in line of duty.
3. A benefit or allowance to a member who has suffered a permanent disabling injury in line of duty.
4. A benefit or allowance to a member who has contracted a permanent disabling sickness in line of duty.
5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars (\$750).
6. Payment to the widow, orphan or orphans of a deceased member as provided by law.
7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them.
8. The return of employee contribution as provided by law.
9. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R. C. M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; amd. Sec. 8, Ch. 208, L. 1967.

Amendments

The 1967 amendment inserted "permanently" after "has become" in subparagraph 2; inserted "a permanent disabling" after "has suffered" in subparagraph 3 and after "has contracted" in subparagraph 4; substituted "seven hundred fifty dollars (\$750)" for "two hundred fifty

dollars (\$250.00)" after "the sum of" in subparagraph 5; in subparagraph 6, deleted "of a pension" after "Payment" and added "as provided by law" after "deceased member"; added a new subparagraph 8; and renumbered former subparagraph 8 as new subparagraph 9.

Repealing Clause

Section 9 of Ch. 208, Laws 1967 repealed all acts and parts of acts in conflict therewith.

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1967, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first or second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least four hundred dollars (\$400.00) per month for the first year of service, and thereafter of at least four hundred dollars (\$400.00) minimum per month plus one per cent (1%) of said minimum base monthly salary four hundred dollars (\$400.00) for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967.

Amendments

The 1967 amendment substituted "1967" for "1957" after "July 1"; and substituted "four hundred dollars (\$400.00)" for "three hundred fifty dollars (\$350.00)" throughout the section.

11-1932.1. Basis in computing added salary. Added salary for years of service will be based on the base monthly salary as established in this act and not on the actual current salary.

History: En. Sec. 2, Ch. 267, L. 1967.

vised Codes of Montana, 1947, to increase the minimum compensation of firemen in cities of the first and second class.

Title of Act

An act to amend section 11-1932, Re-

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

Section 11-2007. Duties of chief.

11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.

11-2010. Trustees of fire districts—mutual aid agreements.

11-2022. Disability, death, insurance and pension benefits.

11-2023. Qualification for compensation.

11-2024. Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.

11-2025. Payment of claim—beneficiaries of decedent.

11-2026. Administration of act.

11-2027. Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system.

11-2028. Earnings to be part of moneys.

11-2029. Reports of industrial accident board and public employees' retirement system.

11-2030. Fire insurance premium tax to be paid into fund.

11-2007. (5147) Duties of chief. The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than thirty (30) hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program. On or before the first day of September of each year, he must prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, stating whether or not his volunteer fire company qualified under the provisions of subparagraph two (2) A of section 11-2023 during the preceding fiscal year, and setting forth the full name and residence address of each member of his department who satisfactorily completed such thirty (30) hours of instruction during said preceding fiscal year, under the provisions of subparagraph two (2) C of

section 11-2023. Such verified certificate must be maintained in a permanent file by said public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan, and must be open for inspection as a public record.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R. C. M. 1921; amd. Sec. 6, Ch. 118, L. 1965.

Effective Date

Section 7 of Ch. 118, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

Amendment

The 1965 amendment added the second paragraph.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and

whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more of the area of privately owned lands of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above: and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the

original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 43, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963.

Amendments

The 1959 amendment by Ch. 48 substituted the word "adjacent" for "contiguous" wherever it appears in subd. (d) and the last paragraph and substituted "either district" for "both districts" each time it appears in the last paragraph.

The 1959 amendment by Ch. 77 in subd. (a) substituted the word "or" for "and" which appeared between the words "buying" and "maintaining"; inserted the words "or private fire service" in two places in the next to last sentence of subd. (a); substituted the words "for the purpose of furnishing" for "for the extension of" before the words "fire protection service" in the same sentence and added the last sentence to subd. (a).

The 1963 amendment incorporated both of the 1959 amendments and inserted "of the privately owned lands" or "of the area of privately owned lands" in one

place in each of subds. (a) and (b), in two places in subd. (c), and in two places in each of the paragraphs of subd. (d).

Severability Clause

Section 2 of Ch. 48, Laws 1959 read: "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 48, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Constitutionality

This section, before the 1957 amendment, was unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

References

Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

11-2009. (5148.1) Unconstitutional.**Unconstitutional**

This section (Sec. 1, Ch. 148, L. 1925), authorizing establishment of fire limits within unincorporated towns, was held unconstitutional in *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501.

This section (Sec. 1, Ch. 148, L. 1925) was a denial of due process in conflict with

section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2010. (5149) Trustees of fire districts—mutual aid agreements.

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district.

(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

- (1) other fire districts
- (2) unincorporated municipalities
- (3) incorporated municipalities
- (4) state agencies which have fire prevention services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965.

Amendments

The 1959 amendment by Ch. 77 inserted the words "may contract with a city, town or private fire company to furnish fire protection for property within said district, or" in subd. (a).

The 1959 amendment by Ch. 118 in subd. (c) inserted the words "or with the trustees of any other fire district estab-

lished in any unincorporated territory, town or village"; inserted the words "whether such city or town or other fire district shall lie within the same county or another county"; inserted the words "or by such other fire district" and added the words "or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district."

The 1965 amendment adopted both 1959 amendments and added subd. (d).

Repealing Clauses

Section 3 of Ch. 77, Laws 1959 and Sec. 2 of Ch. 118, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2021. (5158.2) Repealed.

Repeal

This section (Sec. 2, Ch. 65, L. 1935), creating the Volunteer Firemen's Com-

pensation Fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

11-2022. (5158.3) Disability, death, insurance and pension benefits. 1 to 4. * * * [Same as parent volume.]

5. Every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and who shall complete and file the claim provided for under subparagraph two (2) of section 11-2024, shall be entitled thereafter to participate in the volunteer firemen's pension plan throughout the remainder of his lifetime and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars (\$1,000,000) then the industrial accident board shall pay over said excess amount to the public employees' retirement system, for the payment by said public employees' retirement system of pensions to qualified volunteer firemen during the immediately succeeding fiscal year. The amount to be paid to each qualifying volunteer fireman shall be determined by dividing said excess amount by the number of volunteer firemen qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such excess amount shall be sufficient to pay each such qualified volunteer fireman at least twenty dollars (\$20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding year; but if said excess amount shall not be sufficient to pay each qualified volunteer fireman at least twenty dollars (\$20) per month, then each qualified volunteer fireman's full pension for that year shall be paid to him in one lump

payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified volunteer fireman shall not exceed the sum of twenty-five dollars (\$25) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of twenty-five dollars (\$25) per month to each volunteer fireman qualified as of the beginning of such fiscal year. The fiscal year for the purpose of this act shall begin on the first day of July of each year, and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967.

Amendments

The 1965 amendment added subsection 5.

The 1967 amendment substituted "the industrial accident board shall pay over said excess amount to the public employees' retirement system, for the payment by said public employees' retirement system" for "said excess amount shall be set aside for the payment" after "in excess of one million dollars (\$1,000,000) then" in the second sentence of subsection 5.

11-2023. (5158.4) Qualification for compensation. (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) He must have completed a total of twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village; provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of seven hundred fifty dollars (\$750) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8) or nine (9) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such twenty (20) years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the twenty-year service requirement, and to receive credit for any particular year a volunteer fire-

man must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (But he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age); and

(C) During each of the twenty (20) years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company. Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said twenty (20) year service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967.

Amendments

The 1965 amendment designated the previous section as subsection (1); substituted "provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022" for "herein provided"

in subsection (1); and added subsection (2), including subparagraphs (A) to (C).

The 1967 amendment inserted "(20)" after "twenty" throughout subdivision (A) of subsection (2); and substituted "on or before September 1, 1968" for "within sixty (60) days after July 1, 1965" after "volunteer fire company shall" in subparagraph (C) of subsection (2).

11-2024. (5158.5) Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list. (1) A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined,

dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one (1) year from the date of disability.

(2) A volunteer fireman claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant; the fiscal year for which his eligibility shall commence; the years during which his service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified volunteer firemen, and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1955; amd. Sec. 4, Ch. 160, L. 1967.

Amendments

The 1965 amendment designated the previous section as subsection (1); substituted "under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022" for "hereunder" near the beginning of subsection (1); and added subsection (2).

The 1967 amendment substituted "the public employees' retirement system" for

"such board" after "provided therefor by" and after "shall be accepted by" in subsection (2) and made a minor change in punctuation.

Repealing Clause

Section 5 of Ch. 160, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 160, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

11-2025. (5158.6) Payment of claim—beneficiaries of decedent. (1)
Upon receipt of a claim under subparagraphs one (1), two (2), three (3)

and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

(2) All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any such qualified volunteer fireman after the beginning of any fiscal year but before he has received his full pension for that year, and if such deceased volunteer fireman shall have left a widow, or a child or children under the age of eighteen, or both, then any unpaid part of his said pension for said fiscal year shall be paid by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, if any, or if none, then to the guardian or other person having custody of the said child or children under the age of eighteen years. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen years, then his pension shall terminate at the end of the month prior to the month in which his death occurs; and in any event such pension shall terminate no later than the end of the fiscal year in which death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965.

Amendments

The 1963 amendment deleted the words "by warrants drawn upon the volunteer firemen's fund" after the words "pay the same."

The 1965 amendment designated the previous section as subsection (1); in-

serted "under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022" near the beginning of subsection (1); inserted "subsection one (1) of" before "section 11-2024"; restored "by warrants drawn upon the volunteer firemen's fund" deleted by the 1963 amendment; and added subsection (2).

11-2026. (5158.7) **Administration of act.** (1) Except as provided hereinafter, the industrial accident board of the state of Montana shall administer the Volunteer Firemen's Compensation Act, and all payments made under subparagraph (1) of section 11-2025, R.C.M. 1947, shall be made by warrants drawn by the board.

(2) The board of administration of the public employees' retirement system of the state of Montana shall administer the volunteer firemen's pension plan, and all payments made under subparagraph (2) of section 11-2025 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before fifteen (15) days after the close of each fiscal year, the industrial accident board shall notify the secretary or board of administration of the public employees' retirement system in writing of the balance remaining in the volunteer firemen's compensation fund as of the end of said fiscal year.

History: En. Sec. 7, Ch. 65, L. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967.

Amendments

The 1963 amendment deleted the words "from the volunteer firemen's compensa-

tion fund" after the words "shall be made."

The 1967 amendment designated the previous section as subsection (1); inserted "Except as provided hereinafter" before "the industrial accident board" at the beginning of subsection (1); substi-

tuted "the Volunteer Firemen's Compensation Act" for "this act" after "shall administer"; substituted "under paragraph (1) of section 11-2025, R. C. M. 1947" for "hereunder" after "all payments made"; and added subsection (2).

11-2027. (5158.8) Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system. The industrial accident board shall make such rules and regulations as it deems necessary and advisable in its administration of the Volunteer Firemen's Compensation Act, not inconsistent with the provisions hereof. The board of administration of the public employees' retirement system shall make such rules and regulations as it deems necessary and advisable in its administration of the volunteer firemen's pension plan, not inconsistent with the provisions hereof. Necessary expenses of the industrial accident board for office supplies, stationery and forms in connection with its administration of the Volunteer Firemen's Compensation Act shall be a charge against the fund. Necessary expenses of the public employees' retirement system for office supplies, stationery and forms in connection with its administration of the volunteer firemen's pension plan shall be a charge against the fund, and shall be drawn from said fund by the public employees' retirement system through warrants to be executed by the industrial accident board upon request of the public employees' retirement system, at such intervals as the board of administration of the public employees' retirement system shall deem proper.

History: En. Sec. 8, Ch. 65, L. 1935; amd. Sec. 2, Ch. 160, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

11-2028. (5158.9) Earnings to be part of moneys. All earnings made by moneys earmarked by section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; amd. Sec. 194, Ch. 147, L. 1963.

"moneys earmarked by section 11-2030" for "the volunteer firemen's compensation fund"; and substituted "such moneys" for "said fund" at the end of the section.

Amendment

The 1963 amendment substituted

11-2029. (5158.10) Reports of industrial accident board and public employees' retirement system. (1) The industrial accident board shall, at the time specified in section 92-842 for making report therein provided, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration under the Volunteer Firemen's Compensation Act, with such suggestions or recommendations as it may deem of value for public information.

(2) The public employees' retirement system shall, not later than the first day of November of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative

to its administration under the volunteer firemen's pension plan, with such suggestions or recommendations as it may deem of value for public information.

(3) Copies of all such reports shall be made available by the industrial accident board or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies within the state of Montana which shall at any time request the same.

History: En. Sec. 10, Ch. 65, L. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967.

Amendments

The 1965 amendment designated the previous section as subsection (1); substituted "public employees' retirement system" for "industrial accident board" at the beginning of subsection (1); and added subsections (2) and (3).

The 1967 amendment substituted "industrial accident board" for "public employees' retirement system" at the beginning of subsection (1); substituted "the Volunteer Firemen's Compensation Act" for "this act" after "administration under" in subsection (1); substituted the passage beginning "not later than the first day of November" after "shall" in subsection (2) for "make a report to the governor before October 1 of each year. The report shall contain information on

operations and proceedings for the prior fiscal year relative to the administration of the volunteer firemen's pension plan; it shall also contain suggestions and recommendation as it may deem of value for public information"; substituted "all such reports" for "any such report" after "Copies of," at the beginning of subsection (3); and inserted "by the industrial accident board or the public employees' retirement system" after "available."

Repealing Clause

Section 2 of Ch. 159, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 159, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

11-2030. (5158.11) Fire insurance premium tax to be paid into fund. The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.

History: En. Sec. 11, Ch. 65, L. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963.

Amendments

The 1959 amendment substituted the word "insurers" for "insurance companies" and the reference to "subsection 2 of section 11-1919" for a reference to "paragraph 1 of section 40-1409 pursuant to section 40-1302."

The 1963 amendment substituted "the earmarked revenue fund" for "the 'Volun-

teer Fireman's Compensation Fund,' herein created"; and added the second sentence.

Repealing Clause

Section 2 of Ch. 164, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 164, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section 11-2201. Special improvements—powers of city council.

11-2202. Special improvement districts—placing wires underground—cost per lineal foot.

- 11-2204. Resolution of intention—notice—materials.
- 11-2214.1. Authorization to issue bonds by improvement district formed for pedestrian malls or off-street parking.
- 11-2214.2. Assessments and bonds for pedestrian malls or off-street parking.
- 11-2214.3. Certification of unpaid assessments—payments by installments—interest—and payments in advance for pedestrian malls and off-street parking.
- 11-2214.4. Improvement districts for providing off-street parking facilities—providing for the leasing of real property therefor, and for the improvement thereof.
- 11-2214.5. Special provisions relating to improvement districts for off-street parking purposes.
- 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
- 11-2226. Construction of sidewalks, curbs and gutters without formation of special improvement district.
- 11-2231. Form of bonds and warrants.
- 11-2288. Investment of interest and sinking fund moneys.

11-2201. (5225) **Special improvements—powers of city council.** All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

- (1) Establish pedestrian malls.
- (2) Prohibit, in whole or in part, vehicular traffic on a pedestrian mall.
- (3) Pay, from general funds of the municipality or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall, provided that the resolution of intention contains a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.
- (4) Construct on public streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall including the reconstruction or relocation of existing municipally owned works, im-

provements or facilities on such streets. Such improvements or structures may be attached to abutting private buildings or structures, provided that such improvements or structures shall be located on public property.

(a) It is further provided that in addition to the purposes for which an improvement district may be formed, as heretofore set forth, an improvement district may be formed for the sole purpose of the operation, maintenance, repair and improvements of pedestrian malls, off-street parking facilities, and parkings and parkways.

(b) Subject to the powers granted and the limitations contained in this section, the powers and duties of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt them at the times and in the manners provided for incorporated cities and towns by the applicable portions of sections 11-2204 and 11-2206. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes shall be applicable to the district taxes provided for under this section.

(e) An improvement district formed for the purposes of establishing a pedestrian mall or off-street parking may be financed in accordance with the provisions of section 11-2214, R.C.M. 1947, and/or in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in section 11-2218, R.C.M. 1947.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967.

Amendments

The 1967 amendment substituted "purposes" for "purpose" before "of this chapter" in the first paragraph, and added the remainder of this section beginning with the second paragraph.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

11-2202. (5226) Special improvement districts—placing wires underground—cost per lineal foot. (1) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and for building and constructing municipal swimming pools and other recreation facilities, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water mains, and extensions of water mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

(2). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965.

Amendments

The 1961 amendment near the beginning

of subd. (1) after the words "special improvement districts," inserted the words "for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

The 1965 amendment inserted "and for building and constructing municipal swim-

ming pools and other recreation facilities" after "ditches carrying irrigation or other water" in the first sentence of subd. (1).

References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

11-2204. (5227) Resolution of intention—notice—materials.

(1). * * * [Same as parent volume.]

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights-of-way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) and (4). * * * [Subdivisions (3) and (4), same as parent volume.]

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

Amendment

The 1959 amendment in subd. (2) inserted the word "real" before the word "property" and inserted the words "listed in his name upon the last completed assessment roll for state, county and school district taxes."

Repealing Clause

Section 2 of Ch. 261, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Construction of Section

The words "approximate estimate" should not be construed liberally. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814, 815.

Notice

Until there is service of notice in strict compliance with the statute, no jurisdiction would attach to the municipality.

Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by 7½%. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814.

Parties who have either received notice or waived it by appearing to protest may not take advantage of the failure of notice to other parties who have neither protested nor appeared as parties to the suit. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

This section does not require the city clerk to mail copies of the required notice

to persons who are neither record owners nor personally known owners of an interest in property in the district, since they have been careless in failing to record their ownership. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of defective publication of notice. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

Operation and Effect

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

11-2205. (5228) Assessment of extended district including lots, etc.

Method of Protest against Assessment

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of this section, the city was precluded by sections 11-2214 and 11-2206 (2) from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Resolution of Intention

Only the second requirement of this section, that the extended improvement district to be created be the district benefited by said work or improvements, and to be assessed to pay the costs and expenses thereof, need be stated in the resolution of intention, and where it is not, the resolution of intention is invalid.

11-2206. (5229) Protests against proposed work.

Determination of Area of Protest

The phrase, "the area of the property to be assessed," as used in subsection (2) of this section to describe those persons entitled to protest creation of an improvement district, depends upon the method of assessment used by the city under section 11-2214. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

Sufficiency of Resolution

Besides those requirements enumerated in subsection (1) of this section, the city commission must take two additional steps under section 11-2205 to have a valid resolution of intention for an "extended" district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

References

Cited in *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365, 366.

Smith v. City of Bozeman, 144 M 528, 398 P 2d 462.

Where the resolution of intention was incomplete, due to the failure of the city commission to comply with the requirements of this section, the city did not obtain jurisdiction to create the improvements regardless of the sufficiency of the protests under section 11-2206. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Sufficiency of Resolution

Besides those requirements enumerated in subsection (1) of section 11-2204, the city commission must take two additional steps under this section to have a valid resolution of intention for an "extended" district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Determination of Protests

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Estoppel To Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under this section, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than 40 per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20

square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Sufficiency of Protest

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

If the owners of more than 40 per cent of the area of the property to be assessed protest against either the extent or creation of an improvement district, the city is without jurisdiction to proceed with the improvement. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061; *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365, 366; *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, 528.

11-2207. (5230) Jurisdiction to order proposed improvements.**References**

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2209. (5232) Bid for work and award of contract.**References**

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2214. (5238) Methods of payments of improvements.**Determination of Protestants**

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Determination of Protests

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Estoppel to Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than 40 per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," as used in section 11-2206, subsection (2), should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20 square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Method of Assessment

Since there is a direct correlation between this section and subsection (2) of

section 11-2206, as expressed in the phrase, "the area of the property to be assessed," the method of assessment used by the city governs the basis for determining those persons entitled to protest creation of an improvement district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

11-2214.1. Authorization to issue bonds by improvement district formed for pedestrian malls or off-street parking. An improvement district formed for pedestrian malls or off-street parking shall be authorized to issue improvement bonds.

(a) When the governing body determines that improvement bonds be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which they shall bear. A like description of the bonds shall be inserted in all notices of the proceedings required to be published or posted, and a notice that the bonds will be paid from a special fund collected, in not to exceed twenty-five (25) annual installments, from the assessments of twenty-five dollars (\$25) or over remaining unpaid thirty (30) days after the date of the warrant, or five (5) days after the decision of the governing body upon an objection. A like description of the bonds shall be included in the warrant.

(b) All other proceedings for the work up to and including the approval of the assessment by the governing body, and including delivery of the assessment to the contractor, demand of payment of the several assessments and the return and record thereof, shall be in all respects as provided in this article.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967.

Title of Act

An act relating to cities and towns; providing for the acquisition of off-street parking sites in cities and towns; providing for improvement of such off-street parking sites; providing for the issuance of improvement bonds; providing for the

formation of public improvement district to provide off-street parking facilities; providing for the leasing of land for such off-street parking sites; providing for improving such off-street parking sites; providing for the payment of cost thereof by annual assessment of property in the district; amending sections 11-2201 and 11-2214, R. C. M. 1947; repeal of conflicting acts.

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) After expiration of the prescribed time from the date of the warrant, and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all assessments unpaid, which amount to twenty-five dollars (\$25) or over, upon any assessment.

(b) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is

the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list, and shall remain collectible as provided by this article. Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

(c) The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon, by resolution, direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds, and the times when payable, which shall be so fixed that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding twenty-five (25) years and three (3) months from the date of the bonds, but any fractional amounts may be added to the amount due in any year, so that the amounts due in all other years shall be in equal multiples of one hundred dollars (\$100) each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at one hundred dollars (\$100) or some multiple thereof, not exceeding one thousand dollars (\$1,000). The resolution shall also fix the place, if any, other than the office of the treasurer, at which the bonds and the interest thereon shall be payable.

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention, not exceeding eight per cent (8%) per annum. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967.

11-2214.3. Certification of unpaid assessments—payments by installments—interest—and payments in advance for pedestrian malls and off-street parking. (a) The treasurer at the time he certifies the list of assessments unpaid to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of twenty-five dollars (\$25) or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1, in each year preceding January 1, on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for two (2) years after the last installment on the assessment becomes due, or until the assessment is fully paid.

(b) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(c) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed twenty-five (25).

(d) All assessments of twenty-five dollars (\$25) or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1, and December 1, of each year, immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

(e) The governing body may provide for receiving payment of the installments of the assessment before they become due, and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof, or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967.

11-2214.4. Improvement districts for providing off-street parking facilities—providing for the leasing of real property therefor, and for the improvement thereof. (a) In addition to the purposes which an improvement district may be formed under the provisions of 11-2201, an improvement district may be formed for the sole purpose of leasing real property to be used as off-street parking sites, for the improvement of such off-street parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards and other appliances for the purpose of lighting and beautifying the off-street parking areas and entrances thereto, and for the operation and maintenance thereof.

(b) Subject to the powers granted and the limitations contained in this section, and in 11-2201, the powers and duties of the governing body of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) After the formation of a special improvement district, pursuant to the provisions of 11-2204, and as modified in 11-2214.5, and after having acquired jurisdiction to order the improvement pursuant to 11-2207, the governing body may, in addition to ordering the improvements set forth in subsection (a) of this section, enter into lease agreements for property within the limits of the assessment district for use as off-street parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine, and which lease agreements may provide that same may be terminated by either party upon six (6) months' prior written notice, and may contract for the operation and maintenance thereof. The governing body may enter into such lease agreements and contract for the operation and maintenance of such off-street parking sites without the publication of notice and invitation for bids.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy

and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt at the times and in the manners provided for incorporated cities and towns by the applicable portions of section 11-2214. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for non-payment of taxes, are applicable to the district taxes provided for under this section.

(e) An improvement district formed under provisions of this section shall not be authorized to issue improvement bonds, and no assessment for district purposes against the property within such district shall exceed twelve (12) mills upon each dollar of taxable valuation thereof in any tax year.

(f) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of off-street parking sites and the improvement, operation and maintenance of same. If the municipality is willing to participate in the cost of leasing, improving, operating or maintaining the off-street parking sites in such improvement districts, the governing body may, by resolution, summarily order such participation and the amount of any such participation shall not be subject to the limitations of section 11-2202.

(g) The formation of an improvement district for off-street parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

(h) If in the opinion of the governing body, any portion of the territory of a district formed under this section is no longer benefited by the off-street parking sites provided, the governing body may, by resolution, summarily delete from the district formed under this section any such area, and may form a new district from the balance of the original district formed under this section.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967.

11-2214.5. Special provisions relating to improvement districts for off-street parking purposes. (a) If a petition for the formation of an improvement district for the leasing, improvement or operation and maintenance of an off-street parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to provisions of 11-2207, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(b) If a petition for the formation of an improvement district for off-street parking purposes, and for the leasing of sites and improvement, operation and maintenance thereof is presented to the governing body, signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district, the governing body shall adopt a resolution of intention ordering the proposed improvement and cause same to be published and posted pursuant to the provisions of 11-2204.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967.

Repealing Clause

Section 7 of Ch. 136, Laws 1967 repealed all acts and parts of acts in conflict therewith.

11-2217. Cities and towns may establish sewage treatment, etc.

Constitutionality

Legal electors and owners of property within city were not the proper parties to attack the constitutionality of this section and section 11-2221 on the basis that some persons will have to pay who cannot vote or on the grounds that certain persons outside the city might be charged. City of Billings v. Nore, — M —, 417 P 2d 458, 464, 468.

This section and section 11-2221 are not objectionable on the ground of unreasonable classification because there are

taxpayers who could vote upon storm sewer project but would not be required to pay for it. City of Billings v. Nore, — M —, 417 P 2d 458, 464, 468.

Construction

The language of this section does not require a finding of prevention of pollution before rates and charges can be assessed to pay for the storm sewer system. City of Billings v. Nore, — M —, 417 P 2d 458, 468.

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction,

improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: Banks for Cooperatives, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, and the Federal National Mortgage Association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by

the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; combined two paragraphs into one sentence in subsection (2); inserted the words "in the manner provided in this section" in the first sentence of subsection (6); added the second and third sentences to subsection (6); substituted subsections (8), (9), and (10) for sentences reading: "Said refunding bonds, or any bonds of any such combined issue, may be exchanged at par and accrued interest for all or part of said outstanding bonds, with the consent of the holders thereof, or may be deposited in escrow for the purpose of such exchange with a suitable bank or trust company within or without the state; or proceeds of the sale of the refunding or combined issue may be similarly deposited in escrow and applied to the redemption of all or part of the outstanding bonds at maturity or when the same are next prepayable according to their terms, and to the payment of accrued interest thereon and of any premium payable for redemption prior to maturity, and to the purchase and retirement of any outstanding bonds which can be so purchased at a price less than par plus interest to accrue to maturity or, if prepayable, at a price less than par plus

interest to accrue to their earliest possible redemption date plus any premium payable upon redemption prior to maturity; and any revenue bond proceeds so deposited in escrow may be invested in general obligations of the United States pending the use thereof for the purposes herein authorized, and any such investments shall be deposited with the escrow agent for safekeeping. Nothing herein shall, however, be deemed to authorize the refunding of any matured bonds for the payment of which net revenues on hand are sufficient, or to authorize the refunding of any outstanding bonds at a higher rate of interest unless available net revenues are insufficient to pay principal and interest due thereon, or unless the refunding is authorized simultaneously with the issuance of additional bonds for reconstruction, improvements or additions, which, according to the terms of the outstanding bonds, must be junior and subordinate to the lien of such outstanding bonds upon the net revenues"; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 51, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 21, 1963.

Constitutionality

This section is constitutional. City of Billings v. Nore, — M —, 417 P 2d 458, 464.

11-2219. Rates and charges for services.

Constitutionality

This section is constitutional. City of

Billings v. Nore, — M —, 417 P 2d 458, 468.

11-2220. Income to be kept separately.

Constitutionality

This section is constitutional. City of

Billings v. Nore, — M —, 417 P 2d 458, 468.

11-2221. Covenants with holders of bonds, etc.

Constitutionality

This section and section 11-2217 are not objectionable on the ground of unreasonable classification because there are

taxpayers who could vote upon storm sewer project but would not be required to pay for it. City of Billings v. Nore, — M —, 417 P 2d 458, 464, 468.

Legal electors and owners of property within city were not the proper parties to attack the constitutionality of this section and section 11-2217 on the basis that some persons will have to pay who

cannot vote or on the grounds that certain persons outside the city might be charged. *City of Billings v. Nore*, — M —, 417 P 2d 458, 464, 468.

11-2223. (5241) Hearing of objects—modification of assessment.

Estoppel to Protest

The question of estoppel under this section does not preclude a property owner from protesting a figure used as the "assessable area" in the resolution of intention for purposes of determining the

sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

11-2226. (5244) Construction of sidewalks, curbs and gutters without formation of special improvement district. The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, which warrants shall bear interest at the rate of six per centum (6%) per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965.

Amendment

The 1965 amendment substituted "side-

walk(s), curb(s) and gutter(s), or any combination thereof" in eight places for "sidewalk(s) and curb(s)"; and changed the name of the special sidewalk and curb fund referred to in the second paragraph to "special sidewalk, curb and gutter fund."

11-2228. (5246) Costs and expenses considered as cost of improvements.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2229. (5247) Assessments as lien upon property.

References

Cited in *United States v. Christensen*, 218 F Supp 722, 726.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America,
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$ _____
Interest at the rate of _____ per cent per annum, payable annually. Special improvement district coupon warrant or bond _____, Montana

Issued by the city of _____, Montana.

The treasurer of the city of _____, Montana, will pay to bearer, the sum of _____ dollars as authorized by resolution No. _____ as passed on the _____ day of _____, 19____, creating special improvement district No. _____ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of _____, Montana.

This warrant (or bond) bears interest at the rate of ____ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the city of _____, Montana relating to the issuance thereof.

(seal)

Dated at _____, Montana, this _____ day of _____, 19____.

City of _____, Montana.

By: _____, Mayor
_____, City Clerk

Registered at the office of the city treasurer of _____, Montana, this _____ day of _____, 19____.

City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding six (6%) per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959.

Amendment

The 1959 amendment, in the last paragraph, in the second sentence, substituted the words "bear the signatures of" for "be

signed by the mayor and clerk" and deleted a proviso from the third sentence in that paragraph which read "provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council."

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2232. (5250) Payments under contracts.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2241. (5255) Owner of property—definition of terms, etc.

Publication of Notice

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its estab-

lishment on the ground of failure to publish notice in successive issues of a newspaper. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

11-2263. (5272) Street sprinkling.

Paving Projects

Where the work represents either a minor or major repaving or resurfacing project, it cannot be financed by special improvement taxes for the creation of a

sprinkling district, but must be financed under section 11-2401. *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365; *Peterson v. City of Missoula*, 135 M 96, 337 P 2d 367.

11-2288. Investment of interest and sinking fund moneys. The governing body of a county or city in which a special improvement district is located, may invest interest and sinking fund moneys of the district in time deposits of a bank insured by the Federal Deposit Insurance Corporation, or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965.

Title of Act

An act permitting the investment of interest and sinking fund moneys of special improvement districts.

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2310. Who are entitled to vote—registration of electors.

11-2316. Form and execution of bonds.

11-2310. (5278.10) Who are entitled to vote—registration of electors. Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held, and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated

generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931;
amd. Sec. 1, Ch. 182, L. 1939; amd. Sec.
17, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

11-2316. (5278.16) Form and execution of bonds. At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931;
amd. Sec. 6, Ch. 260, L. 1959.

Amendment

The 1959 amendment deleted a proviso from the end of this section which authorized facsimiles of the signatures of the officers required to sign the coupons.

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2402. Definitions.

11-2404. Authorization of undertaking—form and contents of bonds.

11-2414. Refunding revenue bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building; or other revenue producing facilities and services authorized in these codes for cities and towns.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959.

facilities and services authorized in these codes for cities and towns."

Amendment

The 1959 amendment in subd. (a) added the words "or other revenue producing

Repealing Clause

Section 2 of Ch. 111, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2404. Authorization of undertaking—form and contents of bonds.

The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with

such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963.

Compiler's Notes

This section was amended twice in 1963, once by Ch. 52, and once by Ch. 264. Neither amendatory act mentioned nor incorporated the changes made by the other. However, since the two amendments do not appear to conflict, the compiler has made a combined section incorporating both. It should be noted, however, that Ch. 264 does not take effect until January 1, 1965.

Section 16-1201, referred to in the second paragraph of this section, has been repealed. For similar provisions in current law, see sec. 16-1230.

Amendments

Chapter 52, Laws 1963, added to the fourth sentence in the second paragraph all of the language following "San Francisco, California" and pertaining to bond issues of less than \$150,000.

Chapter 264, Laws 1963, substituted "as provided by the Uniform Commercial Code—Investment Securities" at the end of the section for "within the meaning of and for all the purposes of the negotiable instruments law."

11-2414. Refunding revenue bonds. (1) Refunding revenue bonds issued as authorized in sections 11-2403 and 11-2404 shall be governed by all of the provisions of this chapter as fully as bonds issued for the initial financing of any undertaking, and by the further provisions of this section.

(2) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(3) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(4) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded

thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(5) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (4) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1963.

ditions of the refunding of municipal water and sewer revenue bonds.

Title of Act

An act to amend Chapter 24, Title 11, Revised Codes of Montana, 1947, by the addition of section 11-2414, providing regulations governing the terms and con-

Effective Date

Section 2 of Ch. 50, Laws 1963 provided the act should be in full force and effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 26—DAMAGE CAUSED BY CHANGE OF GRADE

11-2601. (5300) Damages must be paid on change of grade.

Change of Grade Outside City or Town

Court properly refused state's requested instructions to the effect that this sec-

tion could be construed to mean that no compensation may be awarded for a change of grade when the highway in-

volved is not located within the limits of a city or town. State Highway Commission v. Keneally, 142 M 256, 384 P 2d 770.

11-2604. (5303) Appeals and proceedings thereunder.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeal from appraisalment, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

11-2704. (5305.4) Method of procedure.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

11-2705. (5305.5) Changes.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

11-2707. (5305.7) Board of adjustment.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

11-2710. Repealed.

Repeal

This section (Sec. 1, Ch. 171, L. 1959), giving zoning powers to boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

authorizing county commissioners to exercise building and zoning regulatory powers was invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

Unconstitutional

This section (Sec. 1, Ch. 171, L. 1959),

CHAPTER 28—VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

11-2801. (5306) Discontinuation of streets—procedure.

Evidence of Public Detriment

Where the record did not show that the commissioners made a finding of fact that a street could be closed without detriment to the public interest but it did show a

detriment to abutting landowners, to the city, and to the public interest generally, the petition for discontinuance should have been denied. Miller v. Schrock, 135 M 409, 340 P 2d 154.

CHAPTER 30—ENTRY TOWNSITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

11-3014. (5344) Adverse claims—actions for possession.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

11-3026. (5356) District judge authorized to execute deeds, etc.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 31—COMMISSION FORM OF GOVERNMENT

11-3124. Repealed.

Repeal

This section (Sec. 1, Ch. 9, L. 1943), relating to the official bonds of mayors

and councilmen, was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see Secs. 6-601 to 6-608.

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3215. Nomination of candidates—primary election.

11-3244. Oath of commissioners.

11-3248. Compensation of commissioners and mayor.

11-3210. (5409) Powers of municipalities, etc.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

11-3215. (5414) Nomination of candidates—primary election. (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) to (4). * * * [Same as parent volume.]

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1961.

“except those elected” to “except those nominated”; and added subd. (5).

Amendment

The 1961 amendment near the end of the first sentence in subd. (1) changed

Repealing Clause

Section 2 of Ch. 36, Laws 1961 repealed all acts and parts of acts in conflict therewith.

11-3244. (5443) Oath of commissioners. Every person who has been declared elected commissioner, shall within ten (10) days thereafter take and file with the clerk of the commission his oath of office in the form and manner provided by law.

History: En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R. C. M. 1921; amd. Sec. 8, Ch. 31, L. 1923; amd. Sec. 9, Ch. 67, L. 1967.

Amendments

The 1967 amendment deleted the passage at the end of this section requiring a bond of elected commissioners, which

read, “and shall execute and give sufficient bond to the municipal corporation in such sum as the judge of the district court of the county in which such municipality is situated, not, however, exceeding \$5000.00 for commissioners in cities of the first class and \$3000.00 for commissioners in all other cities and towns, conditioned for the faithful per-

formance of the duties of his office, which bond shall be filed with the clerk and recorder of the county in which such municipality is situated."

Saving Clause

Section 10 of Ch. 67, Laws 1967, read "This act shall not affect the validity of

bonds in effect on the effective date of this act."

Repealing Clause

Section 11 of Ch. 67, Laws 1967 read "Sections 11-722, 11-723, 11-3124, 11-3324, and 40-1727 are repealed."

11-3248. (5447) Compensation of commissioners and mayor. The salary of each commissioner may be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, twenty dollars (\$20.00); cities with more than twenty-five thousand inhabitants, not to exceed forty dollars (\$40.00); provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965.

Amendment

The 1965 amendment substituted "may" for "shall" in the preliminary clause and in the last sentence; and increased the

daily compensation from \$10 to \$20 in cities of less than 25,000, and from \$20 to \$40 in cities of over 25,000.

Effective Date

Section 1 of Ch. 71, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 33—COMMISSION-MANAGER FORM OF GOVERNMENT (Continued)

11-3324. (5508) Repealed.

Repeal

This section (Sec. 111, Ch. 152, L. 1917), relating to the official bonds of

clerks and employees, was repealed by Sec. 11, Ch. 67, Laws 1967. For present law, see Secs. 6-601 to 6-608.

CHAPTER 34—CITY AND COUNTY CONSOLIDATED GOVERNMENT

Section 11-3413. Compensation of commission—maximum—penalty for absences—mileage.

11-3455. Tax levy for current expense—limitation on.

11-3458. Tax levy for special services.

11-3413. (5520.13) Compensation of commission—maximum—penalty for absences—mileage. The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for aldermen of cities of the first class.

Absence from all regular meetings for a period of ninety (90) days shall operate to vacate the seat of a member unless such absence be authorized by the commission. In addition to any compensation authorized by this section each member of the commission shall receive the same sum prescribed by law for county commissioners per mile for any distance, in excess of ten (10) miles, necessarily traveled in going from and returning to his residence because of attendance upon a regular, or

regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: En. Sec. 13, Ch. 121, L. 1923; amd. Sec. 1, Ch. 79, L. 1967.

Amendments

The 1967 amendment substituted "but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for alderman of cities of the first class" for "to be paid in equal monthly or quarterly installments; but the total amount of any such compensation for each member, shall not exceed the sum of (\$400.00) per year" after "members" in the first paragraph; deleted the first sentence in the second

paragraph, which read, "Any member absent from a regular or regularly called meeting of the commission, except on account of his own illness, shall forfeit two per centum (2%) of his annual compensation for each such absence"; substituted "the same sum prescribed by law for county commissioners" for "ten cents" after "shall receive" in the second sentence; and added "or in travel in the county undertaken in performance of official duties" at the end of the second paragraph.

11-3455. (5520.55) Tax levy for current expense—limitation on. No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government.

History: En. Sec. 55, Ch. 121, L. 1923; amd. Sec. 1, Ch. 81, L. 1967.

Amendments

The 1967 amendment substituted "the maximum levies prescribed by law for

general fund purposes in the county and the cities and towns which have been consolidated into a single government" for "sixteen mills on each dollar of the assessed valuation" after "in excess of" at the end of this section.

11-3458. (5520.58) Tax levy for special services. The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by section 11-3455 as may be necessary with other available funds and grants to pay the cost of such special service or services. The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns; but in no case shall such additional levy be more than twenty (20) mills.

History: En. Sec. 1, Ch. 162, L. 1925; amd. Sec. 2, Ch. 81, L. 1967.

Amendments

The 1967 amendment inserted "with other available funds and grants" after "may be necessary"; and substituted "The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning

body in response to changing population patterns" for "Any such additional tax levied under the authority of this section upon the property within any district shall not exceed fifteen mills unless the question of levying a higher rate for a specified year or years shall have been submitted to the electors of the district and approved by a majority of those voting therein" in the second sentence.

CHAPTER 35—CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

- Section 11-3516. Letting of contracts—advertising for bids—execution.
 11-3518. Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds.
 11-3523. Fire department—director and chief—voluntary fire districts continued—law governing districts.
 11-3524. Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in.

11-3516. (5520.76) Letting of contracts—advertising for bids—execution. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance or operation of any public works or improvements for which must be paid a sum exceeding two thousand dollars (\$2,000) shall be awarded to the lowest responsible bidder, after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: En. Sec. 75, Ch. 121, L. 1923; \$250 to \$2,000 the minimum size of contracts above which awards must be made to the lowest responsible bidder.
 amd. Sec. 1, Ch. 80, L. 1967.

Amendments

The 1967 amendment increased from

11-3518. (5520.78) Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds. The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the city and county of _____" and each police officer and patrolman shall be known and designated as deputy sheriff.

Any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such police officer who has vested rights in any police reserve fund shall maintain prior vested rights in such fund upon

its transfer to a consolidated county municipality. Any police reserve fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such police reserve fund shall consist of the president, the director of finance, the director of law and two (2) members of the police department from the active list of the police officers of said municipality, who shall be selected by a majority vote of the members of the police department on the active list of said municipality. Such selection shall be made between the first and tenth day of May in each year and said active police officer members of said board shall serve overlapping two (2) year terms. Except as provided in this section, the police reserve fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 190, L. 1961.

Amendment

The 1961 amendment added a new second paragraph.

11-3523. (5520.83) Fire department—director and chief—voluntary fire districts continued—law governing districts. (a) The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(b) Provided that notwithstanding any other provision of law the adoption of a consolidated county municipal government shall have no effect on the existence, rights or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947.

(c) Provided further that nothing in chapter 34, Title 11, Revised Codes of Montana, 1947, shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947, within consolidated county municipalities.

(d) Voluntary fire departments or fire districts within consolidated county municipalities shall only be organized, created, supported, financed, dissolved, managed, and their boundaries shall only be changed, pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947. These organizations may enter mutual aid agreements as provided by section 11-2010, R. C. M. 1947.

History: En. Sec. 82, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2,
Ch. 2, L. 1965.

The 1965 amendment inserted letter designations for the subsections and added the second sentence of subsection (d).

Amendments

The 1961 amendment added the provisions that now constitute subsection (b) and (c) and the first sentence of subsection (d).

Repealing Clause

Section 2 of Ch. 191, Laws 1961 repealed all acts and parts of acts in conflict therewith.

11-3524. (5520.84) Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in. Any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such fireman who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such disability or pension fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 83, Ch. 121, L. 1923; amd. Sec. 1, Ch. 192, L. 1961.

Amendment

The 1961 amendment inserted two new sentences at the beginning of the section; substituted "disability or pension fund" for "disability fund" in each of the last three

sentences; and added to the present third sentence the words "subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act."

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section 11-3714. Indenture for security of bonds.

11-3721. Funding or refunding bonds—negotiability.

11-3714. Indenture for security of bonds. The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture, to the extent that such provisions do not conflict with provisions stated in the bonds. An indenture pursuant to which

bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protection of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintained by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any

such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963.

Amended to read: "to conform with provisions stated in the bonds" to the third sentence in the first paragraph; and made a minor change in phraseology.

Amendment

The 1963 amendment added "to the extent that such provisions do not con-

11-3721. Funding or refunding bonds—negotiability. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

History: En. Sec. 21, Ch. 223, L. 1951;
amd. Sec. 11-108, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "shall be fully negotiable, as provided by the

Uniform Commercial Code—Investment Securities" at the end of the section for "are negotiable instruments, except when registered in the name of a registered owner."

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

- Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
- 11-3803. Definitions.
- 11-3804. City planning board.
- 11-3808. Citizen members—qualifications.
- 11-3810. City-county planning boards—members—term of officer members and citizen members.
- 11-3812. Citizen members of city-county board—qualifications.
- 11-3813. Removal of citizen appointee.
- 11-3818. Quorum—official action.
- 11-3820. Expenses while attending conferences in another city, county, or state.
- 11-3824. Powers and duties.
- 11-3825. Funds for operation—tax levy authority.
- 11-3827. Power to accept and use gifts and donations—special nonreverting fund—federal and state aid.
- 11-3828. Master plan—policies.
- 11-3830. Jurisdictional area.
- 11-3830.1. Planning projects outside jurisdictional area—broad construction.
- 11-3831. Master plan—contents.
- 11-3833. Notice of hearing prior to adoption of master plan.
- 11-3834. Resolution adopting master plan and recommending ordinance.
- 11-3840. Adoption of master plan—policy and pattern of development.
- 11-3842. Plats of subdivisions—approval by planning board.
- 11-3843. Application for approval of plat.
- 11-3844. Determination of whether application for approval should be granted.
- 11-3845. Regulations governing procedure for application or approval of plats.
- 11-3846. Approval or disapproval of application for plat.
- 11-3847. Fees.
- 11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.
- 11-3851. Appeals.
- 11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.
- 11-3855. Validation of prior zoning ordinances, rules and regulations.

11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted from the end of the second paragraph a clause reading, "and in addition, that certain

regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities and counties to carry out the purposes of this act."

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provision in this section "that additional powers be granted legislative bodies of cities and counties" was invalid, in so far as it applied to counties, as an un-

constitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3803. Definitions. As used in this act:

1 to 3. * * * [Same as parent volume.]

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5 to 9. * * * [Same as parent volume.]

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "comprehensive development plan" near the beginning of paragraph 4 for "complete master plan"; substituted "a plan" before "of land use" in paragraph 4 for "master plan"; substituted the second sentence of

paragraph 4 for a clause reading, "and including such ordinances, laws, or resolutions as may be deemed necessary to implement such complete master plan or parts thereof by legislative approval and provision for such regulations as are deemed necessary and their enforcement"; deleted a comma between "individual" and "firm" in paragraph 10; and added paragraph 12.

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

Amendment

The 1959 amendment, in subd. d., substituted the words "of whom shall be

resident freeholders within the urban area" for "members of which shall be residents of the urban area"; added the clause pertaining to resident freeholders within the city; and added the final sentence.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947.

History: En. Sec. 8, Ch. 246, L. 1957; amd. Sec. 3, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

tional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

11-3809. Repealed.

Repeal

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members

of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3810. City-county planning boards—members—term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members may reside outside the city limits but within the jurisdictional area of the planning board.

e. The ninth member shall be selected by the eight (8) officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

2. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective

terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965.

Amendments

The 1963 amendment inserted the numerical designations for the two subsections; added the second sentence to paragraph 1 d; reduced the terms of non-governmental members, as specified in subsection 2, from four to two years; substituted "one (1) or two (2) years" in the latter part of subsection 2 for "one

(1) to four (4) years"; and made minor changes in phraseology.

The 1965 amendment reduced the number of citizen members specified in paragraph 1 d from three to two; substituted "may reside" for "must reside" in the second sentence of paragraph 1 d; and added paragraph 1 e.

Repealing Clause

Section 2 of Ch. 189, Laws 1965 repealed all acts and parts of acts in conflict therewith.

11-3812. Citizen members of city-county board—qualifications. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

Compiler's Note

The beginning of the amending section correctly identified this section as the one to be amended; however, in setting out the section as amended there was an obvious

clerical error as it was set out as "11-3182." The reference should have read "11-3812."

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

11-3813. Removal of citizen appointee. Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted a first paragraph, for text of which see parent volume; and made a minor change in phraseology.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted "of members" after "majority" in the latter part of the section.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or related problems, the planning board may pay the actual expenses of the attending

members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957;
amd. Sec. 7, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "planning board" for "commission" in the latter part of the section.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1 to 5. * * * [Same as parent volume.]

6. Make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

7. Prepare, publish, and distribute reports, proposed ordinances and proposed resolutions and other material relating to the activities authorized under this act.

8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

History: En. Sec. 24, Ch. 246, L. 1957;
amd. Sec. 8, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "any governing bodies" in paragraph 6 for "the mayor and city council and the board of county commissioners of any govern-

mental units"; inserted "proposed" before "ordinances" in paragraph 7; inserted "and proposed resolutions" after "ordinances" in paragraph 7; deleted former paragraphs 8, 9, 10, and 12, for text of which see parent volume; and redesignated former paragraph 11 as 8.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 11, Chapter 14, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional area as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed one (1)

mill for planning board purposes, under procedures set forth in Title 16, Chapter 19, R.C.M. 1947.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the four subsections; substituted "may" for "shall" before "budget and appropriate" in the latter part of subsection 2; increased the tax levies authorized by subsections 3 and 4 from one-half mill to one mill; added "under procedures set forth in Title 11, Chapter 14, R.C.M. 1947" at the end of

subsection 3; substituted "planning district" for "planning and zoning district" in the early part of subsection 4; substituted "that property within the jurisdictional area as established pursuant to section 11-3830" in subsection 4 for "only that property within the limits of a master plan or proposed master plan as defined in section 11-3830"; and added "under procedures set forth in Title 16, Chapter 19, R.C.M. 1947" at the end of subsection 4.

11-3827. Power to accept and use gifts and donations—special non-reverting fund—federal and state aid. A city, county or city-county planning board organized pursuant to the provisions of this title, is hereby empowered and given the right to accept, receive, take, hold, own and possess any gift, donation, grant, devise or bequest, or any property, real, personal or mixed, or any improved or unimproved park or playground, and utilize, hold, or dispose of the same for planning purposes, not inconsistent with the provisions of this act. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965.

Amendment

The 1965 amendment substituted the first sentence for a sentence reading, "A

city or county may accept gifts and donations for planning board purposes"; and inserted "or its agencies and instrumentalities of state or local government" before "or from civic sources" in the final sentence.

11-3828. Master plan—policies. 1. To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

2. The planning board may also propose policies for:

a. subdivision plats

b. the development of public ways, public places, public structures, and public and private utilities.

c. the issuance of improvement location permits on platted and unplatted lands.

d. the laying out and development of public ways and services to platted and unplatted lands.

3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R.C.M. 1947.

4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the subsections; inserted "community" before "development" in subsection 1; substituted the words "and shall serve in an advisory capacity to the local governing bodies establishing the planning board" at the end of subsection 1 for sentences reading, "Upon the creation of a planning board under the terms of this act and before such time as a master plan has been adopted, as provided in this act, a planning board so created shall serve in an advisory capacity to the local governing bodies establishing a plan-

ning board and shall consider and make recommendations to the city or cities or county on all subdivision and convenience plats presented to the city council or board of county commissioners prior to the subdivision or convenience plat receiving final approval for filing by the proper local governmental authority. The city or county shall not be bound by the recommendation but shall give consideration to the recommendations so made"; substituted the preliminary clause of subsection 2 for "It may also formulate policies for."; inserted clause a in subsection 2; redesignated former clauses 1, 2, and 3 as clauses b, c, and d of subsection 2; made minor changes in phraseology; and added subsections 3 and 4.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the city. The jurisdictional area shall not extend more than four and one-half ($4\frac{1}{2}$) miles beyond the limits of any city within the jurisdictional area.

2. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

3. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as provided in this section, and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963.

Amendments

The 1959 amendment completely rewrote the section to read as follows: "The planning board shall prepare and adopt a master plan for the development of the city wherein it was created and such contiguous unincorporated area outside the city as, in the judgment of the planning board, bears reasonable relation to the development of the city. Before exercising any authority or jurisdiction over such unincorporated area, the planning board, after approval by the board of county commissioners, shall file in the office of the clerk and recorder a map or plat showing the boundaries of such unincorporated area. With the approval of the board of county commissioners, such boundaries may be revised from time to time by the planning board. Such revised boundaries shall be shown upon a map or plat which shall be filed as above provided. The area included in such map or plat shall constitute the area over which the planning board shall have jurisdiction.

In case an unincorporated area is within the potential jurisdiction of more than

one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map or plat showing the boundary lines so agreed upon and approved shall be filed as a part of any master plan or plans, and thereafter shall fix the limit of territorial jurisdiction with respect to decisions, orders or other actions to be made or taken by the respective planning boards or the governing bodies of cities or counties involved under the authority of this act; provided, however, that in the case of counties not exceeding twenty thousand (20,000) in population, the jurisdictional limits of the city-county planning board shall not extend more than six (6) miles from the limits of any class of city or town, incorporated or unincorporated, within such county, and in counties exceeding twenty thousand (20,000) population said limits shall not extend beyond twelve (12) miles from the limits of any city or town, incorporated or unincorporated, within such county."

The 1963 amendment again completely rewrote the section and divided it into numbered subsections.

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provisions empowering city-county planning boards to develop and exercise complete discretion in developing master plans for contiguous unincorporated areas surrounding cities within a

radius of twelve miles of such cities were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3830.1. Planning projects outside jurisdictional area—broad construction. Any city-county planning board organized pursuant to the provisions of Title 11, chapter 38, R. C. M. 1947, is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county, and outside of the jurisdictional area of said city-county planning board as defined in section 11-3830, R. C. M. 1947. Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965.

Title of Act

An act to authorize duly constituted city-county planning board to conduct specific planning projects outside of the jurisdictional area of said planning board, if requested by the board of county com-

missioners, and to construe said power broadly so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

- a. History, population, and physical site conditions;
 - b. Land use, including the height, area, bulk, location and use of private and public structures and premises;
 - c. Population densities;
 - d. Community centers and neighborhood units;
 - e. Blighted and slum areas;
 - f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;
 - g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;
 - h. Flood control and prevention;
 - i. Public and private utilities, including water, light, heat, communication, and other services;
 - j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;
 - k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;
 - l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;
 - m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;
 - n. Education, including location and extent of schools, colleges, and universities;
 - o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;
 - p. Conservation of water, soil, agricultural, and mineral resources;
 - q. Any other factors which are a part of the physical, economic, or social situation within the city or county.
3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.
4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose

of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957;
amd. Sec. 12, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted the preliminary clause for "A master plan may include:".

11-3832. Repealed.

Repeal

This section (Sec. 32, Ch. 246, L. 1957), relating to amended or additional plans

for streets and highways, was repealed by Sec. 26, Ch. 247, Laws 1963.

11-3833. Notice of hearing prior to adoption of master plan. 1. Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

2. At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957;
amd. Sec. 13, Ch. 247, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; substituted "submission of the proposed master plan to the governing bodies" in subsection 1 for "adoption of a master plan"; deleted from the end of subsection 1 the

words "and a proposed ordinance for its enforcement"; and substituted the words "jurisdictional area" in subsection 2 for "area over which the board has jurisdiction."

References

Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3834. Resolution adopting master plan and recommending ordinance. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957;
amd. Sec. 14, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

11-3835 to 11-3839. Repealed.

Repeal

These sections (Secs. 35 to 39, Ch. 246, L. 1957), relating to adoption of master plans by planning boards, action thereon

by governing bodies, and amendments subsequent to adoption, were repealed by Sec. 26, Ch. 247, Laws 1963.

11-3840. Adoption of master plan—policy and pattern of development. The governing bodies shall adopt, revise or reject such proposed plan or any of its parts. After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give considera-

tion to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
3. Adoption of subdivision controls;
4. Adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957;
amd. Sec. 15, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted the first sentence and added clauses 3 and 4.

11-3841. Repealed.

Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions—approval by planning board. 1. Where a master plan has been approved, the city council may by ordinance require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

2. Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

3. Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957;
amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963.

Amendments

The 1959 amendment revised the original text to read as follows: "After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and recorder or the city or town clerk unless

compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area"; and added a second paragraph which, as amended in 1963, now constitutes subsection 3.

The 1963 amendment substituted new subsections 1 and 2 for the former first paragraph; designated the paragraph added by the 1959 amendment as subsection 3; substituted "limit" for "usurp" in the first part of subsection 3; and substituted "be" for "add" before "an additional requirement" in subsection 3.

11-3843. Application for approval of plat. 1. A person desiring the approval of a plat involving lands within the corporate limits of the city and covered by said master plan shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

2. When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it shall set

a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957; amd. Sec. 17, Ch. 247, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; inserted "involving lands within the corporate limits of the city and covered by said

master plan" in subsection 1; and substituted "When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it" at the beginning of subsection 2 for "Upon receipt of the application, the board, if it tentatively approves the application."

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be recommended, the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.
2. Coordination with an extension of facilities included in the master plan.
3. Establishment of minimum width, depth, and area of lots within the projected subdivision.
4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957; amd. Sec. 18, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommended" for "granted" in the preliminary clause.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application for approval of plats of the lands within its advisory jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957; amd. Sec. 19, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "for" for "or" after "application"; and inserted "advisory" before "jurisdiction."

11-3846. Approval or disapproval of application for plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall recommend approval or disapproval to the city council. If the board recommends disapproval, it shall set forth its reasons in a communication to the city council and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957; amd. Sec. 20, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommend approval or disapproval to the city council" at the end of the first sentence for "approve or disapprove it"; deleted a second sentence reading, "If the

board approves, it shall affix the commission's seal upon the plat"; substituted "If the board recommends disapproval" at the beginning of the present second sentence for "If it disapproves"; and substituted "in a communication to the city council" in the present second sentence for "in its own records."

11-3847. Fees. The city council shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his

application. These fees shall be credited to a fund established by the governing bodies for the planning board.

History: En. Sec. 47, Ch. 246, L. 1957;
amd. Sec. 21, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "The city council shall" for "The board may" at the beginning of the section; and added the third sentence.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands within the corporate limits of the city and covered by such master plan and ordinance shall be without legal effect unless approved by the city council.

History: En. Sec. 48, Ch. 246, L. 1957;
amd. Sec. 22, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted "and replats" following "approval of plats"; inserted "within the corporate limits of the city and" in the latter part of the section; and substituted "city council" for "board" at the end of the section.

11-3849. Repealed.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the requirement of structures

conforming to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement

location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Appeals. A decision of a city council rejecting a proposed subdivision plat may be reviewed by the district court upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the city council.

History: En. Sec. 51, Ch. 246, L. 1957;
amd. Sec. 23, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

11-3852. Repealed.

Repeal

This section (Sec. 52, Ch. 246, L. 1957; Sec. 5, Ch. 271, L. 1959), granting zoning powers to city councils and boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise building and zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.* 139 M 263, 362 P 2d 1021, 1025.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to author-

ize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

Amendment

The 1959 amendment substituted the word "resolution" for "law" and substituted the last part of the section, beginning with "development," for "develop-

ment, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources."

11-3854. Repealed.

Repeal

This section (Sec. 54, Ch. 246, L. 1957; Sec. 7, Ch. 271, L. 1959), granting zoning commission powers to planning boards, was repealed by Sec. 12, Ch. 246, Laws 1963, and by Sec. 26, Ch. 247, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances or resolutions and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances or resolutions, are hereby validated and continued in effect, until amended or repealed by action of the governing bodies taken under the authority of this act.

History: En. Sec. 55, Ch. 246, L. 1957; amd. Sec. 24, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted "or resolutions" after "ordinances" in two places; substituted "governing bodies" for "city council of such city" near the end of the section; and deleted a second sentence which read, "These ordinances shall have the same effect as though previously adopted as a master plan of land use or parts thereof."

Saving Clause

Section 25 of Ch. 247, Laws 1963 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Repealing Clause

Section 26 of Ch. 247, Laws 1963 read "Sections 11-3832, 11-3835, 11-3836, 11-3837, 11-3838, 11-3839, 11-3854, 11-3856, 11-3857, and 11-3858, R.C.M. 1947 are repealed."

11-3856 to 11-3858. Repealed.

Repeal

These sections (Secs. 56 to 58, Ch. 246, L. 1957), relating to enforcement of zon-

ing ordinances and to the termination of zoning district provisions, were repealed by Sec. 26, Ch. 247, Laws 1963.

CHAPTER 39—URBAN RENEWAL LAW

- Section 11-3901.** Definitions.
11-3902. Findings and declarations of necessity.
11-3903. Encouragement of private enterprise.
11-3904. Workable program.
11-3905. Finding of necessity by local governing body.
11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

- 11-3907. Powers.
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11-3901. **Definitions.** The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 16 [11-3916] of this act.

(b) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age obsolescence of buildings or improvements, whether residential or non-residential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959.

Title of Act

An act to provide for the rehabilitation, redevelopment, and clearance of blighted areas in cities and towns in this state in accordance with urban renewal plans approved by the governing bodies thereof; to define the duties, liabilities, exemptions and powers of such cities and towns in undertaking such activities, including the power to acquire property through the exercise of the power of eminent domain or otherwise, to dispose of property subject to any restrictions deemed necessary to prevent the development or spread of

future deteriorated or blighted areas, to issue revenue bonds and other obligations, to levy taxes and assessments and to enter into agreements to secure federal aid and comply with conditions imposed in connection therewith; to provide for an urban renewal agency and its powers hereunder if a city or town determines it to be in the public interest; to authorize public bodies to furnish funds, services, facilities and property in aid of urban renewal projects hereunder, and to provide that properties while held by a public agency hereunder shall be exempt from taxation.

11-3902. Findings and declarations of necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive pro-

portion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959.

11-3903. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959.

11-3904. Workable program. A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959.

11-3905. Finding of necessity by local governing body. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality

History: En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965.

urban renewal project had been approved by the taxpayers of such municipality at an election as provided in section 6, subsection (g) thereof."

Amendment

The 1965 amendment deleted a final clause reading, "and (3) that the proposed

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the

municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 1 (b) [11-3901] hereof.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the taxpayers of such municipality in accordance with the provisions of sections 11-2308 to 11-2310, inclusive, at the same election and shall be approved by a majority of those taxpayers voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary

or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965.

Amendment

The 1965 amendment substituted "on such question" for "in such election" at the end of the first sentence of subsection (g); and added the second, third, and fourth sentences to subsection (g).

Effective Date

Section 3 of Ch. 38, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 10 [11-3910] of this act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices

vested with urban renewal project powers under section 15 [11-3915] of this act; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To exercise all or any part or combination of powers herein granted.

(k) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959.

11-3908. Eminent domain. A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959.

11-3909. Disposal of property in urban renewal area. (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys,

administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any

part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years.

History: En. Sec. 9, Ch. 195, L. 1959.

11-3910. **Issuance of bonds.** (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or

without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(f) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963.

Uniform Commercial Code" at the end of the first sentence of subsection (b) for "shall not be subject to the provisions of any other law or charter relating the authorization, issuance, or sale of bonds."

Amendment

The 1963 amendment substituted "shall be subject only to the provisions of the

11-3911. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a

municipality pursuant to this act: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959.

11-3912. Property exempt from taxes and from levy and sale by virtue of an execution. (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959.

11-3913. Cooperation by public bodies. (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things nec-

essary to aid or cooperate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 9 (b) [11-3909].

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 10 [11-3910], may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: En. Sec. 13, Ch. 195, L. 1959.

11-3914. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959.

11-3915. Exercise of powers in carrying out urban renewal project. (a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 16 [11-3916]) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

- (1) To formulate and coordinate a workable program as specified in section 4 [11-3904].
- (2) To prepare urban renewal plans.
- (3) To prepare recommended modifications to an urban renewal project plan.
- (4) To undertake and carry out urban renewal projects as required by the local governing body.
- (5) To make and execute contracts as specified in section 7 [11-3907], with the exception of contracts for the purchase or sale of real or personal property.
- (6) To disseminate blight clearance and urban renewal information.
- (7) To exercise the powers prescribed by section 7 (b) [11-3907], except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.
- (8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 7 (c) [11-3907].
- (9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.
- (10) To insure real or personal property as provided in section 7 (c) [11-3907].
- (11) To effectuate the plans provided for in section 7 (f) [11-3907].
- (12) To prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation.
- (13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.
- (14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.
- (15) To negotiate for the acquisition of land.
- (16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.
- (17) To organize, coordinate, and direct the administration of the provisions of this act.
- (18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in section 15 (b) [subsection (b) of this section] as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959.

11-3916. Urban renewal agency. (a) When a municipality has made the finding prescribed in section 5 [11-3905] and has elected to have the urban renewal project powers, as specified in section 15 [11-3915], exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the by-laws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

History: En. Sec. 16, Ch. 195, L. 1959.

11-3917. Prohibition against discrimination. For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

History: En. Sec. 17, Ch. 195, L. 1959.

11-3918. Interested public officials, commissioners, or employees. No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 15 [11-3915], shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of section 15 [11-3915]. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959.

11-3919. Separability—act controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959.

11-3920. Short title. This act shall be known and may be cited as the "Urban Renewal Law."

History: En. Sec. 20, Ch. 195, L. 1959.

CHAPTER 40—OPEN DITCHES

- Section 11-4001. Purpose of act.
11-4002. Unfenced, open ditch declared nuisance.
11-4003. Powers of governing body.
11-4004. Notice to close and fill ditch—publication.
11-4005. Notice of intent to provide for protective devices—period allowed for compliance.
11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town, if such ditches terminate within the limits of such city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961.

Title of Act

An act to permit an incorporated city or town to prevent the diversion or passage of water through the limits of such city or town in unfenced, open ditches that terminate in such city or town in order

to protect persons from drowning, except commercial irrigation ditches; permitting a city or town to declare such a ditch a public nuisance; permitting a city or town to have such an unfenced, open ditch enjoined as a public nuisance if corrective measures are not taken by interested parties.

11-4002. Unfenced, open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an unfenced, open ditch that terminates within the limits of such city or town is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961.

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches terminating within the corporate limits and to declare any such ditch a public nuisance, and

(2) To determine the measures necessary to remove the danger and public nuisance, including fencing, use of culvert or other protective device based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961.

11-4004. Notice to close and fill ditch—publication. When a public nuisance has been declared as provided in this act, the city or town shall give public notice for at least sixty (60) days to owners of the ditch and of any water rights affected that such ditch has been declared a public

nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open. Such notice shall include publication once each week in an established newspaper published within the city or town, if one exists, or in its absence in the official county newspaper for at least (8) successive weeks.

History: En. Sec. 4, Ch. 63, L. 1961.

11-4005. Notice of intent to provide for protective devices—period allowed for compliance. If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the sixty (60) day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town. If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed six (6) months to remove the public nuisance in the manner ordered by the city or town.

If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided, or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the six-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961.

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes.

History: En. Sec. 6, Ch. 63, L. 1961.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

Section 11-4101.	Definition of terms.
11-4102.	General municipal and county powers.
11-4103.	Limited obligation bonds—form and contents—sale—negotiability.
11-4104.	Provisions for security of bondholders.
11-4105.	Determination of costs—terms of lease.
11-4106.	Refunding of bonds.
11-4107.	Use of proceeds of bond sales.
11-4108.	Taxation of projects.
11-4109.	Powers cumulative.
11-4110.	Advice and information by state planning board.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) Municipality shall mean any incorporated city or town in the state;

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for manufacturing or industrial enterprises;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested; and

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device.

History: En. Sec. 1, Ch. 51, L. 1965.

Title of Act

An act relating to industrial development; to define terms; to provide for the acquisition, purchase, construction, reconstruction, improvement, betterment and extension of industrial development by

cities, towns and counties for the prescribed uses and purposes; to authorize and regulate the issuance of mortgages and revenue bonds for financing such industrial development as prescribed; to provide for payment of such mortgages and bonds; to provide for leasing of property; and to provide for payment of taxes.

11-4102. General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers: (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and

(4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965.

11-4103. Limited obligation bonds—form and contents—sale—negotiability. (1) All bonds issued by a municipality or county under the authority of this act shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of this act, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds, referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered

or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty (30) years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds, issued under the authority of this act, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality or county may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds, issued under the authority of this act, and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

History: En. Sec. 3, Ch. 51, L. 1965.

11-4104. Provisions for security of bondholders. (1) The principal of and interest on any bonds issued under the authority of this act (a) shall be secured by a pledge of the revenues out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority.

(2) The proceedings, under which the bonds are authorized to be issued under the provisions of this act, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenues of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this act; provided, that in making any such agreements or provisions a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this act and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on

such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage. power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under the provisions of this act, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965.

11-4105. Determination of costs—terms of lease. (1) Prior to the leasing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by this act, the municipality or county shall lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project, (b) to pay the taxes on the project, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. Subject to the limitations of this act, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law

relating to the sale of property owned by municipalities and counties, such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: En. Sec. 5, Ch. 51, L. 1965.

11-4106. Refunding of bonds. Any bonds issued under the provisions of this act and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith; provided, that an issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of subsection (5) of section 5 [11-4105] of this act. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this act shall be subject to the provisions contained in section 3 [11-4103] of this act and may be secured in accordance with the provisions of section 4 [11-4104] of this act.

History: En. Sec. 6, Ch. 51, L. 1965.

11-4107. Use of proceeds of bond sales. The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965.

11-4108. Taxation of projects. Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances, if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year; but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year; provided, that where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965.

11-4109. Powers cumulative. Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965.

11-4110. Advice and information by state planning board. The state planning board shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965.

Separability Clause

Section 11 of Ch. 51, Laws 1965 read
"If any section in this act or any part of

any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

CHAPTER 42—CITY-COUNTY BUILDING

- Section 11-4201. Acquisition or construction and management of city-county building.
11-4202. Contents of contract between city and county.
11-4203. Bonding authority undiminished.

11-4201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase or lease, and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967.

Title of Act

An act authorizing a city and county

to construct, purchase or lease, and manage a city-county building to house the offices of city government and county government.

11-4202. Contents of contract between city and county. The contracts shall provide (1) for the proposed expenditure for the construction, purchase or lease of the city-county building and the proposed cost of equipping and operating the building. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building.

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this act.

History: En. Sec. 2, Ch. 45, L. 1967.

11-4203. Bonding authority undiminished. (1) This act shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967.

CHAPTER 43—CITY-COUNTY DISASTER EMERGENCY TAX

Section 11-4301. Definitions.

11-4302. Determination of disaster—resolution.

11-4303. Council meeting following mayor's receipt of resolution.

11-4304. Council's resolution—inclusion of facts of disaster.

11-4305. Estimation of expenses and levying of tax.

11-4306. Emergency tax surplus.

11-4301. Definitions. As used in this act: (1) An "emergency" may be:

(a) A fire, flood, explosion, storm, blizzard, earthquake or epidemic; or

(b) An occurrence requiring the immediate preservation of order or public health; or

(c) An occurrence requiring the restoration of a condition of usefulness which has been destroyed; or

(d) An occurrence which requires relief of a stricken community.

(2) "County disaster committee" includes:

(a) The members of the agricultural stabilization and conservation county committee of the county involved;

(b) The county commissioners and mayor or mayors of the county involved;

(c) The office manager of the soil conservation service office in the county involved;

(d) The county civil defense director;

(e) The county agriculture extension agent;

(f) Such other persons not to exceed two (2) in number as the county commissioners may appoint.

(3) "Council" means the city council of an incorporated municipality

(4) "Board" means the board of county commissioners.

(5) "Mayor" means the mayor of an incorporated municipality.

(6) "Municipality" means an incorporated municipality.

History: En. Sec. 1, Ch. 97, L. 1967. ceed two (2) mills for city and county emergencies.

Title of Act

An act permitting a levy of not to ex-

11-4302. Determination of disaster—resolution. The county disaster committee shall determine by a majority vote when an emergency exists. Upon the determination that an emergency does exist, they shall submit a resolution to the mayor or mayors of municipalities of the county and to the chairman of the board.

History: En. Sec. 2, Ch. 97, L. 1967.

11-4303. Council meeting following mayor's receipt of resolution. (1) Upon receipt of the resolution the mayor or mayors and the chairman of the board shall call joint or separate meetings of the council or councils and the board, respectively.

(2) A mayor or chairman of a board shall give reasonable notice of the time and place at which the meeting or meetings shall be held.

History: En. Sec. 3, Ch. 97, L. 1967.

11-4304. Council's resolution—inclusion of facts of disaster. (1) If at the meeting or meetings the council and the board respectively find from the resolution of the county disaster committee that an emergency exists, they shall place in their respective minutes a resolution stating facts constituting the emergency.

History: En. Sec. 4, Ch. 97, L. 1967.

11-4305. Estimation of expenses and levying of tax. (1) The council and the board shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the council shall not exceed two (2) mills on the municipality's taxable valuation. The millage levied by the board shall not exceed two (2) mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body providing that the sum of the levies for emergencies as set forth in this act shall not exceed two (2) mills in any one year.

(4) All levies under this act may only be passed by a unanimous vote of the appropriate body.

(5) An event shall not be determined to be an emergency under section 2 [11-4302] of this act more than two (2) weeks after the occurrence of such event.

History: En. Sec. 5, Ch. 97, L. 1967.

11-4306. Emergency tax surplus. Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies determined in accordance with section 2 [11-4302] of this act.

History: En. Sec. 6, Ch. 97, L. 1967.

Effective Date

Section 7 of Ch. 97, Laws 1967 read
"This act is effective December 31, 1967."

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VOLUME 3

Part 1

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 1) THROUGH VOLUME 420, PACIFIC
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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

- Section 28-105. Powers of board.
28-109. Duty of owner of classified forest land.
28-111. Determination of costs of fire protection—certification—tax levy.
28-123. Disposal of moneys.
28-124. Disbursement of moneys.

28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any

of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967.

Amendments

The 1963 amendment added the provisions to paragraph (b).

The 1967 amendment in subsection (b) decreased from 75% to 51% the number of property owners required to approve creation of the proposed district.

Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

28-109. Duty of owner of classified forest land. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967.

Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Effective Date

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-111. Determination of costs of fire protection—certification—tax levy. The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

tence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

Amendment

The 1963 amendment, in the last sen-

28-123. Disposal of moneys. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other

co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410,

all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys

may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

28-601. Authority of county commissioners to protect range, etc.**References**

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

28-603. Powers of board.**References**

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

Section 28-701. Bill of sale required for transportation of coniferous trees on highway.

28-701. Bill of sale required for transportation of coniferous trees on highway. (1) It shall be unlawful and constitute a misdemeanor for any person to transport on the highways of this state, more than ten (10) coniferous trees without having in his possession a bill of sale showing his title for the trees. The bill of sale shall specify:

- (a) the date of its execution;
 - (b) the name and address of the vendor or donor of the trees;
 - (c) the name and address of the vendee or donee of the trees;
 - (d) the number of trees, by species, sold or transferred by the bill of sale; and
 - (e) the shipping yards or the property from which the trees were taken.
- (2) The foregoing provisions do not apply to:
- (a) the transportation of trees with their roots intact;
 - (b) the transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed;
 - (c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents;
 - (d) the transportation of coniferous trees by a common carrier.

History: En. Sec. 1, Ch. 137, L. 1967.

Title of Act

An act declaring it unlawful to transport on the highways of this state more

than ten (10) coniferous trees, unless the transporter has a bill of sale in his possession showing his title for the trees and providing a penalty for violation of this act.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Fraudulent Conveyance Act: New Mexico, Ohio, and Virgin Islands.

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 705.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) What dealings with debtor exonerate guarantor.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action

against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

References

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

CHAPTER 3—INDEMNITY

30-301. (8163) Indemnity defined.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-307. (8169) Rules for interpreting agreement of indemnity.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-308. (8170) When person indemnifying is a surety.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) Surety discharged by certain acts of the creditor.

Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed.

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS

30-502. (8203) Surety may require the creditor to proceed, etc.

Prejudice of Surety Required for Release

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omis-

sion or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) **Repealed.**

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-104, 31-105, 31-110, 31-114, 31-127, 31-135, 31-138, 31-163 to 31-169.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210, 31-222.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
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31-167. Report to highway patrol board of suspension or revocation of licenses.
31-168. Offenses furnishing ground for suspension or revocation of license.
31-169. Review of administrative actions.

31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement. The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and necessary traveling expenses. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967.

Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted "have the rank of colonel and shall" after "who shall"; substituted "fixed by the

board with approval of the board of examiners within the limits of the legislative appropriation for such purpose" for "of seven thousand dollars (\$7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph; and substituted "patrolman" for "employee" in subparagraph 6.

31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

- (i) Sound and active physical and mental condition.
- (ii) Good moral character.
- (iii) Resident of Montana for at least one (1) year immediately prior to appointment.
- (iv) Pass a satisfactory test in the operation of automobiles.
- (v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

(j) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the

witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden

to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

Amendment

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

31-114. Fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except the penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965.

Amendment

The 1965 amendment inserted "except the penalty assessments levied and paid

as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

31-127. What persons shall not be licensed. The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The board may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the Montana highway patrol and the superintendent of public instruction.

(b) The board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2 to 8. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965. set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Amendment

The 1965 amendment changed the format of subsection (1); increased the age

Cross-Reference

Driver education courses, secs. 75-5301 to 75-5309.

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of four dollars (\$4), (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period.

(c) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negli-

gent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum * * * county general fund)" in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

31-147. Authority of board to suspend license, etc.

Suspension of License Not Punishment

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so

that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. *In re France*, — M —, 411 P 2d 732.

31-149. Period of suspension or revocation.

References

In re France, — M —, 411 P 2d 732.

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to

Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state

to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state

may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if

any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing

that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

- Section 31-201. Definitions.
 31-205. Payments into the Montana highway patrolmen's retirement account—investment.
 31-206. Rules and regulations—actuarial data.
 31-209. Payments by contributors.
 31-210. Contributions by the state of Montana.
 31-222. Nomination of beneficiary.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

posited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

Amendment

The 1963 amendment substituted "de-

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

31-222. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967.

Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

Amendments

The 1967 amendment deleted "up until, but not after, the time of retirement" after "with the board" at the end of this section.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
3. Supervision of public highways, 32-317 to 32-321.
 6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 10. Obstructions and encroachments, 32-1021, 32-1022.
 11. Speed and traffic regulations, 32-1123, 32-1127, 32-1131.
 13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 16. State highway commission and highway engineer—powers and duties, 32-1619, 32-1627 to 32-1629, 32-1629.1, 32-1630, 32-1631.
 18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 21. Uniform act regulating traffic on highways, 32-2134.1 to 32-2134.3, 32-2137, 32-2143.1, 32-2143.2, 32-2144, 32-2170, 32-2173, 32-2174, 32-2177, 32-2197, 32-2198, 32-21-105, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-150.1 to 32-21-150.3, 32-21-163, 32-21-164, 32-21-166 to 32-21-175.
 22. Highway code—general provisions, 32-2201 to 32-2203.
 23. Classification of highways, 32-2301, 32-2302.
 24. Assent to federal aid—state highway commission, powers and duties, 32-2401 to 32-2425.
 25. State highway engineer and other employees, 32-2501 to 32-2503.
 26. Distribution and apportionment of highway construction funds, 32-2601 to 32-2611.
 27. Montana toll bridge authority, 32-2701 to 32-2716.
 28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2815.
 29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
 30. County road superintendent, 32-3001 to 32-3007.
 31. Local improvement districts, 32-3101 to 32-3131.
 32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
 33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301, 32-3302, 32-3302.1, 32-3303 to 32-3317.
 34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3406.
 35. Bond issues for state toll bridges, 32-3501 to 32-3509.
 36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
 37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
 38. County road and bridge bonds, 32-3801 to 32-3806.
 39. Acquisition and disposition of property by state, 32-3901 to 32-3920.
 40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
 41. Contracts of state highway commission, 32-4101 to 32-4103.
 42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
 43. Control of access, 32-4301 to 32-4308, 32-4308.1, 32-4309 to 32-4311.
 44. Good roads day—obstructions, encroachments and debris on highways, 32-4401 to 32-4410.
 45. Junkyards along roads, 32-4513 to 32-4523.
 46. Traffic safety program, 32-4601 to 32-4607.
 47. Zoning and advertising regulation along highways, 32-4701 to 32-4714.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-102 to 32-107. (1611 to 1616) Repealed.

Repeal

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913;

Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959), relating to definitions and classifications of highways, were repealed by Sec. 12-109,

Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.

Repeal

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-317. Designation of emergency area near construction project.

32-318. Notice of designation of emergency area—removal of designation.

32-319. Livestock not to run at large in emergency area.

32-320. Impounding of animals at large—notice to owner—fees and mileage.

32-321. Penalty for violations.

32-302 to 32-314. (1622 to 1632) Repealed.

Repeal

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.

32-316. (1634) Repealed.

Repeal

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emer-

gency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.

Repeal

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-415, 32-416. (1649, 1650) Repealed.

Repeal

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-509 to 32-526. (1684 to 1701) Repealed.**Repeal**

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.**Repeal**

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES

32-701 to 32-711. (1703 to 1713) Repealed.**Repeal**

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-713 to 32-715. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.**Repeal**

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways.

32-1022. Violations.

32-1002 to 32-1017. (1727 to 1741.1) Repealed.**Repeal**

These sections (Sec. 2734, Pol. C. 1895;

Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16,

Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1, Ch. 176, L. 1965), relating to encroachments and obstructions on highways,

were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4402 to 32-4410.

32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways. Any person who owns, controls or is entitled to possession of any livestock shall not herd or drive a herd of livestock in excess of the number of ten (10) on any interstate or state primary highways as defined by the state highway commission in the state unless the livestock shall be preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock shall not be herded or driven on any interstate or state primary highways during nighttime as defined in section 90-406, R.C.M. 1947, except in a case of emergency. During the hours of darkness the flagmen escorts will use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This provision shall not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967.

Title of Act

An act requiring flagmen escorts preceding and following livestock herded on

interstate or state primary highways and prohibiting herding livestock on said highways during nighttime; and providing exceptions.

32-1022. Violations. Any person violating the terms of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1123. Standards of maximum dimensions, weights, etc.

32-1127. Permits for excess size and weight.

32-1131. Disposition of fines.

32-1113. (1748.1) Owner or operator of vehicle released, etc.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent inter-

vening cause in one for the jury and their finding will not be disturbed when there is substantial evidence to support it. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 424.

32-1115. (1748.3) Imputation of ordinary negligence to guest.

References

Holland v. Konda, 142 M 536, 385 P 2d 272.

32-1123. Standards of maximum dimensions, weights, etc. The following standards are hereby made applicable to and shall govern the maximum dimensions and weights of motor vehicles, and other characteristics and factors thereof, operating over the highways of and in the state

of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Definitions. For the purpose of this act, the following definitions shall apply:

- (a) Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (b) Motor Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (c) Truck-Tractor—as defined in section 32-2103, R.C.M. 1947.
- (d) Truck—as defined in section 32-2104, R.C.M. 1947.
- (e) Trailer—as defined in section 32-2105, R.C.M. 1947.
- (f) Semitrailer—as defined in section 32-2105, R.C.M. 1947.
- (g) Dolly or converter gear—a device consisting of one (1) or two

(2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a full trailer as defined in section 32-2105, R.C.M. 1947.

(2) Width—No vehicle, unladen or with load, shall have a total outside width in excess of ninety-six (96) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than fifty (50) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded and followed by flagmen escorts for the purpose of warning other highway users.

(3) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(4) Length—(a) No single truck, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear units of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one (1) motor vehicle and no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one (1) vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) (i) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(ii) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(c) The state highway commission may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of vehicles having two (2) but not more than nine (9) axles for which the maximum single axle load shall be twenty thousand (20,000) pounds and all axles forty (40) inches or less apart shall be considered a single axle, and for which no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall carry a load in excess of thirty-four thousand (34,000) pounds. The maximum gross weight allowed on any vehicle or combination so authorized shall be determined by the formula $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$ in which W equals gross weight, L equals wheel base in feet and N equals number of axles, provided that the maximum allowable gross weight on any group of axles shall not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This subdivision shall have no application to highways which are a part of the national system of interstate and defense highways (as referred to

in section 127 of title 23, United States Code) when such application would prevent this state from receiving any federal funds for highway purposes.

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ($\frac{1}{2}$) foot, the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b)(i) and (b)(ii) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.

(f). * * * [Same as parent volume.]

(g) Nothing contained in this section shall be deemed to authorize, without a permit issued as provided by law, the operation of any combination of vehicles having any gross weight, axle load or size in excess of that authorized in this section, or the operation of any combination of vehicles on the national system of interstate and defense highways having any gross weight or size in excess of that permitted by operation of law in this state prior to July 1, 1956, or by federal law or regulation in excess thereof, which may be hereafter adopted. If federal law allows establishment of size and weight limits in excess of those permitted in this section, without penalty or denial of federal funds for highway purposes, the state highway commission may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in this section, but within the limits necessary to qualify for federal aid highway funds.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955; amd. Sec. 1, Ch. 221, L. 1959; amd. Sec. 1, Ch. 243, L. 1961; amd. Sec. 1, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment added new subdivision (1); redesignated old subdivisions (1) through (4) as new subdivisions (2) through (5); substituted new subdivision (4)(c) for old subdivision (3)(c), which read, "No combinations of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles, shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full

trailer by use of a dolly equipped with fifth wheel which shall be considered a part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear unit of such combination shall be equipped with breakaway brakes"; redesignated the first paragraph of subdivision (5)(b) as (i); redesignated old subdivision (4)(c) as new subdivision (5)(b)(ii); added new subdivision (5)(c); in new subdivision (5)(e), substituted "(b)(i) and (b)(ii) of clause (5)" for "(b) and (c) of clause (4)" before "above are subject"; and added new subdivision (5)(g).

32-1127. (1751.6) Permits for excess size and weight. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for

the maintenance of which the body granting the permit is responsible; provided, however, that only the state highway commission shall have the discretion to issue permits for movement of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act said permit shall be issued in the public interest; provided, however, that any carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of more than nine (9) months.

The applicant for any special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load to be operated or moved and the particular state highways over which the vehicle or load is to be moved and whether such permit is required for a single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special Permits—Discretion of Issuer—Conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Three dollars (\$3.00) for each permit issued in excess of the size and weight specified in this act; provided, however, that term or blanket permits shall not be issued for overwidth loads in excess of fifteen (15) feet, overlength loads in excess of seventy (70) feet, and overheight loads in excess of a limit determined by the state highway commission. Loads in excess of these dimensions will be limited to trip permits.

In addition to the three dollar (\$3.00) fee specified herein for overweight permits, there shall be charged for single trip permits: five dollars (\$5.00) for distances to and including one hundred (100) miles; fifteen dollars (\$15.00) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25.00) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(c) Special Permits—Misrepresentations and Violations—Penalty—Display of Permit. Any person who knowingly and willfully misrepresents the size or weight of any load in obtaining a special permit or does not follow the requirements and conditions of the special permit or who

operates any vehicle, the gross weight of which is in excess of the maximum for which such vehicle may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the state highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the state highway commission who shall find any person operating a vehicle in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955; amd. Sec. 5, Ch. 243, L. 1961; amd. Sec. 1, Ch. 225, L. 1965.

Amendment

The 1965 amendment substituted "shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load" for "shall specifically describe the vehicle or vehicles and load" after "The applicant for any

special permit" at the beginning of the second paragraph; and substituted "over which the vehicle or load is to be moved" for "for which to operate is requested" after "particular state highways" in the first sentence of the second paragraph.

Effective Date

Section 2 of Ch. 225, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

32-1131. (1752) Disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except the penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965.

Amendment

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative as-

sembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

32-1202. Accidents involving death or personal injuries.**References**

Parini v. Lanch, — M —, 418 P 2d 861, 864.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.**Repeal**

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1619. Disposition of state highway moneys.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.

32-1628. Bypassing of municipalities—consent of municipal governing body.

32-1629. Littering highway as misdemeanor—penalty.

32-1629.1. Allowing garbage, debris or refuse to be blown or removed from vehicle onto highway—penalty.

32-1630. Reward for informing on litterbugs.

32-1631. Posting notice of act.

32-1601 to 32-1618. (1783 to 1798) Repealed.**Repeal**

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 180, L. 1961; Sec. 1, Ch. 182, L. 1961;

Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-2418, 32-2501 to 32-2503, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

32-1620. (1800) Repealed.**Repeal**

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

32-1622 to 32-1626. Repealed.**Repeal**

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961; Sec. 1, Ch. 219, L. 1963), relating to state

and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the state highway commission shall pay the entire costs of construction and maintenance of streets and highways which:

(a) Are state highway routes; and

(b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ($\frac{1}{2}$) of the state's share of the cost of curbs and gutters along such streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965.

Title of Act

An act relating to construction and

maintenance of certain streets and highways in or near incorporated municipalities.

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The highway commission shall not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The highway commission shall notify the governing body of such municipality by certified mail that they propose to bypass the municipality. No contract shall be let nor work commenced until the governing body notifies the commission of its consent, or until the elapse of sixty (60) days after the notice has been sent by the highway commission to such municipality, whichever first occurs. The failure of such municipality to act and notify the highway commission of its action within such sixty (60) day period shall constitute implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the highway commission has been notified of such consent.

(5) Nothing contained in this act shall in any way modify the provisions of section 32-1625, R. C. M. 1947.

History: En. Sec. 2, Ch. 210, L. 1965.

Effective Date

Compiler's Notes

Section 32-1625, referred to in subsection (5) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Section 3 of Ch. 210, Laws, 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

32-1629. Littering highway as misdemeanor—penalty. Any person who throws, dumps, deposits or causes to be deposited, any garbage, refuse, waste or litter on the right of way of any state highway or interstate highway, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding thirty (30) days, or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 1, Ch. 128, L. 1965; amd. Sec. 1, Ch. 309, L. 1967.

right of way of any state, interstate, or secondary highway; providing for a penalty, reward and a repealing clause.

Title of Act

An act making it unlawful to throw, dump, deposit or cause to be deposited, any garbage, refuse, waste or litter on the

Amendments

The 1967 amendment made no change in this section.

32-1629.1. Allowing garbage, debris or refuse to be blown or removed from vehicle onto highway—penalty. It is unlawful for any person or persons transporting garbage, debris or refuse upon any public highway or road of this state to negligently or carelessly allow the same to be blown or otherwise removed from the vehicle in which such garbage, debris or refuse is being transported. Any person found guilty of a violation of this section shall be fined in a sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both the fine and imprisonment, in the discretion of the court.

History: En. Sec. 2, Ch. 309, L. 1967.

Title of Act

An act amending section 32-1629, R. C. M. 1947, as amended, making the transportation of garbage, refuse and

debris unlawful unless the vehicle in which same is transported is protected to prevent the garbage, debris or refuse from being blown or removed from the vehicle while in transit and providing a penalty.

32-1630. Reward for informing on litterbugs. Upon a conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state general fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 128, L. 1965.

32-1631. Posting notice of act. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, on the state and interstate highways at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 128, L. 1965.

Repealing Clause

Section 4 of Ch. 128, Laws 1965 re-

pealed all acts and parts of acts in conflict therewith.

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.**Repeal**

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-1901 to 32-1915. Repealed.**Repeal**

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963), relating to toll bridges, were repealed by

Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2701 to 32-2716, 32-3501 to 32-3509, and 32-3919.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-2001 to 32-2010. Repealed.**Repeal**

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were

repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

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|--------------------|--|
| Section 32-2134.1. | Injury to or removal of sign or marker as misdemeanor—penalty. |
| 32-2134.2. | Reward for information on injury to or removal of sign or marker. |
| 32-2134.3. | Posting of act along highways. |
| 32-2137. | Traffic-control signal legend. |
| 32-2143.1. | Permission of authorities to hold speed contest. |
| 32-2143.2. | Penalty for unauthorized drag racing. |
| 32-2144. | Speed restrictions—basic rule. |
| 32-2170. | Vehicle approaching or entering intersection. |
| 32-2173. | Vehicle entering highway from private road, driveway or public approach ramp. |
| 32-2174. | Vehicles approaching "Yield" sign. |
| 32-2177. | Pedestrians' right of way in crosswalk. |
| 32-2197. | Overtaking and passing school bus. |
| 32-2198. | Special lighting equipment on school buses. |
| 32-21-105. | Riding on motorcycles. |
| 32-21-132. | Audible and visual signals on vehicles. |
| 32-21-143.1. | Brake equipment required. |
| 32-21-143.2. | Performance ability of brakes. |
| 32-21-143.3. | Maintenance of brakes. |
| 32-21-143.4. | Hydraulic brake fluid. |
| 32-21-149. | Restrictions as to tire equipment. |
| 32-21-150.1. | Seat belts required in new vehicles. |
| 32-21-150.2. | Specifications for seat belts. |
| 32-21-150.3. | Penalty for seat belt violations. |
| 32-21-163. | Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. |

- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-166. Vehicle equipment safety compact—text.
- 32-21-167. Legislative findings on equipment safety.
- 32-21-168. Equipment requirements continued in force.
- 32-21-169. State commissioner on vehicle equipment safety commission.
- 32-21-170. Retirement of equipment safety commission employees.
- 32-21-171. Governmental agencies to co-operate with equipment safety commission.
- 32-21-172. Documents filed and notices given by equipment safety commission.
- 32-21-173. Equipment safety commission budgets.
- 32-21-174. Equipment safety commission accounts.
- 32-21-175. Governor as executive head for compact purposes.

32-2114. Street or highway—private road or driveway—roadway, etc.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2115. Intersection.

Nature of Roads Forming Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2133. State highway commission to adopt sign manual.

Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from

intersection, it was not error on the judge's part to refuse to instruct jury on the latter section. Graveley v. Springer, 145 M 486, 402 P 2d 41.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134. State highway commission to sign all state highways.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty. Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or

marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. Posting of act along highways. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 184, L. 1965. all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed

32-2136. Obedience to and required traffic-control devices.

References

Faucette v. Christensen, 145 M 28, 400
P 2d 883.

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.]

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; **Amendment**
amd. Sec. 1, Ch. 211, L. 1963.

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2142. Persons under the influence of intoxicating liquor or of drugs.

Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under

this section, it falls within the jurisdiction of a justice of the peace under section 93-410. Wilson v. Brodie, — M —, 419 P 2d 306, 308.

32-2143.1. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967.

Title of Act

An act prohibiting speed contests and "drag racing" on the public highways or

streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

32-2143.2. Penalty for unauthorized drag racing. Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967.

32-2144. Speed restrictions—basic rule. (a). * * * [Same as parent volume.]

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;
2. Thirty-five (35) miles per hour on any highways under construction or repairs;
3. Fifty-five (55) miles per hour in such other locations during the nighttime; except that the nighttime speed limit on those completed sections of interstate highways shall be sixty-five (65) miles per hour, however, the Montana highway commission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R.C.M. 1947.

Daytime means from a half ($\frac{1}{2}$) hour before sunrise to a half ($\frac{1}{2}$) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 32-2145 and 32-2146.

(c). * * * [Same as parent volume.]

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967.

tion concerning interstate highways at the end of the first paragraph of subdivision 3 of subsection (b).

Amendments

The 1967 amendment added the excep-

32-2147. Minimum speed regulations.

Instructions

Where plaintiff's son was killed when car in which he was riding struck rear

of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow

speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal speed. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

32-2151. Drive on right side of roadway—exceptions.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly*

v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

References

Cited in *Hurly v. Star Transfer Co.*,

141 M 176, 376 P 2d 504, 507; *Williams v. Wallace*, 143 M 11, 386 P 2d 744.

32-2156. Further limitations on driving to left of center, etc.

Contributory Negligence

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Reliance on Markings

Defendant, who attempted to pass plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. *Faucette v. Christensen*, 145 M 28, 400 P 2d 883.

32-2157. No-passing zones.

Duty of Other Driver

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable

safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

32-2159. Driving on roadways laned for traffic.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decedent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

32-2167. Turning movements and required signals.

Duty To Look to Rear

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily

negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person

know with absolute certainty that the turning movement can be made with safety. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

ginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the be-

Repealing Clause

Section 2 of Ch. 175, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2171. Vehicle turning left at intersection.**Additional Duties**

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negate the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where

plaintiff was making a left turn in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

References

United States v. Clark, 247 F Supp 958.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

Amendment

The 1965 amendment inserted "or public approach ramp."

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * *
[Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 54, L. 1965.

all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment added subsection (c).

Effective Date

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed

32-2191. Obedience to signal indicating approach of train.

Jury Instructions

Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look and listen when either tracks or highway

signs indicated the presence of a railway crossing was reversible error. O'Brien v. Great Northern Ry. Co., 145 M 13, 400 P 2d 634.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped or is preparing to stop on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed as the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2,
Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "or is preparing to stop" after "which has

stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at the beginning of the third sentence of subsection (b).

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955;
amd. Sec. 3, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-21-105. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

Amendments

The 1967 amendment numbered the

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2)

alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.	Amendment The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).
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32-21-143. Repealed.

Repeal This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes	required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.
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32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting

mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for pro-

viding that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20%). Each

reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and spe-

cifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

32-21-143.2. **Performance ability of brakes.** Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds --	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965. "Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read

32-21-149. Restrictions as to tire equipment. (a). * * * [Same as parent volume.]

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d). * * * [Same as parent volume.]

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967.

Amendments

The 1967 amendment inserted "the" before "roadway" in subsection (b); and

inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal" after "proportions" in subsection (c).

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents

at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and im-

pounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall de-

termine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third ($1/3$) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner.

Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private

citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and

regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings; providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal moneys for one-third ($\frac{1}{3}$) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing com-

mission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965. repealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 10 of Ch. 109, Laws 1965 re-

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.
32-2202. Legislative policy and intent.
32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and

safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312,

32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the state highway commission custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state of Montana shall have integrated systems of highways, roads, and streets, and that the state highway commission, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965.

32-2203. General definitions. Subject to additional definitions contained in subsequent chapters of this code which are applicable to specific chapters or parts, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Authority"—Montana toll bridge authority.

(4) "Board"—Board of county commissioners.

(5) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(6) "Clerk"—County clerk and recorder.

(7) "Commission"—State highway commission.

(8) "Committee"—Local improvement district committee of supervisors.

(9) "Condemnation"—Taking by exercise of the right of eminent domain.

(10) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(11) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(12) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(13) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(14) "Eminent domain"—The right of the state to take private property for public use.

(15) "Engineer"—State highway engineer.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the commission.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the Montana toll bridge authority, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965.

Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

Section 32-2301. Classification—highways and roads.

32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

- (a) Federal-aid highways
- (b) State highways
- (c) County roads
- (d) City streets.

(2) All highways which are not designated, selected, established, constructed, or maintained by the commission are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—STATE HIGHWAY COMMISSION, POWERS AND DUTIES

Section 32-2401. Assent to federal-aid acts.

32-2402. State highway commission.

32-2403. Commission members—qualifications—appointment.

32-2404. Commission members—bond—expenses.

32-2405. Commission—chairman—meetings.

32-2406. General power of commission.

32-2407. Commission to designate highways.

32-2408. Designation of highways not located entirely within the state.

32-2409. Duties of commission—reports.

32-2410. Compilation of statistics—investigation—consultation.

32-2411. Agreements concerning effects of weight on highways.

32-2412. Seeding along highways.

- 32-2413. Description and plan of new highway or controlled access facility—recording.
- 32-2414. Relocation of utilities facilities—hearings—order.
- 32-2415. Relocation—costs.
- 32-2416. Relocation—definitions.
- 32-2417. Certification and payment of claims.
- 32-2418. Prosecution for violation.
- 32-2419. Ports of entry and checking stations authorized.
- 32-2420. Checking stations required at major points of entry into state.
- 32-2421. Co-operation in use of ports of entry and checking stations.
- 32-2422. Purposes of act.
- 32-2423. Purposes for which federal funds to be expended.
- 32-2424. Extent of interest acquired.
- 32-2425. Expenditure of funds.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The commission may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The commission may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The commission may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were des-

ignated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

32-2402. State highway commission. The state highway commission consists of five (5) members to be appointed by the governor with the consent of the senate. Members of the commission now holding office shall continue until the expiration of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965.

32-2403. Commission members—qualifications—appointment. (1) Each member shall be a citizen of the United States and a resident of the state of Montana.

(2) One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(3) (a) The terms of office of the members of the state highway commission shall be for four (4) years, and shall expire on the first day of February.

(b) If a vacancy occurs, the governor shall appoint with the consent of the senate a person having the qualifications herein provided who shall hold office only for the unexpired portion of the term in which the vacancy occurs.

(4) (a) No two (2) members shall at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(b) Not more than three (3) members shall at the time of appointment or thereafter during their respective terms be members of the same political party.

(c) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee shall be a member of the commission.

(d) No member shall be removed from office by the governor before the expiration of his term except for a disqualifying change of residence or for a cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office.

History: En. Sec. 4-103, Ch. 197, L. 1965.

32-2404. Commission members—bond—expenses. (1) Each member shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) Each member shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year.

History: En. Sec. 4-104, Ch. 197, L. 1965.

32-2405. Commission—chairman—meetings. (1) Annually the commission shall elect one (1) of its members as chairman. Election as chairman shall not interfere with the member's right to vote on all matters before the commission.

(2) The commission shall meet at least once each month for the purpose of transacting business including the consideration of claims and the letting of contracts.

(3) Three (3) members shall constitute a quorum. No resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members.

History: En. Sec. 4-105, Ch. 197, L. 1965.

32-2406. General power of commission. The commission may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and abandon highways on the federal-aid systems and state highways. It may co-operate and contract with counties and municipalities to provide assistance in performing such functions on other highways and streets.

History: En. Sec. 4-106, Ch. 197, L. 1965.

32-2407. Commission to designate highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on said highway, the continuity of said highway in relation to the state highway systems as the same may connect or tie into a unified system of federal-aid highways and the taxable valuations which are affected by said highway.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways and make necessary rules and regulations for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967. beginning, "taking into consideration" after "secondary system" at the end of subsection (2).

Amendments

The 1967 amendment added the passage

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though such highways are not located entirely and continuously within the boundaries of the state. Such designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not

connect with and is not a part of the state highway system of the adjoining state.

(2) The commission may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of such highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965.

32-2409. Duties of commission—reports. The commission shall: (1) Make all rules and regulations necessary for its government.

(2) Maintain and preserve all its records in its office at the capitol, keeping its office open at such times as its business shall require.

(3) File and preserve:

(a) A record of all proceedings and orders pertaining to the matters under its direction.

(b) Copies of all plans, specifications, contracts, estimates and official acts.

(4) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

(5) Prepare and submit to the governor and the legislative assembly during its regular session, not later than the fifth legislative day, a comprehensive condensed report of commission activities for the preceding biennium. The report shall include:

(a) An accounting for all moneys received from federal or state sources.

(b) A review of projects undertaken and completed.

(c) A summary of maintenance work performed.

(d) Statistical tables covering personnel changes, compensation and status.

(e) A review of right of way procurement experience, including condemnation proceedings and the average price paid per acre of land in representative areas of the state.

(f) All other matters which would assist the assembly in determining the financial and legal requirements of the commission for the following biennium.

History: En. Sec. 4-109, Ch. 197, L. 1965.

32-2410. Compilation of statistics—investigation—consultation. (1) The commission shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The commission and the state highway engineer may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The commission and the engineer shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. They shall at all times lend their aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965.

32-2411. Agreements concerning effects of weight on highways. (1) The commission may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965.

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

History: En. Sec. 4-112, Ch. 197, L. 1965.

32-2413. Description and plan of new highway or controlled access facility—recording. (1) Whenever the commission shall establish the location width, and lines of any new or proposed highway, or declare any road, street or highway as a controlled access facility, it shall make a description and plan showing the center line and the established width.

(2) That description and plan and an attached certified copy of the commission resolution establishing the location shall be recorded in the office of the proper county clerk and recorder in a separate book kept for that purpose. The commission shall, at its expense, furnish each county clerk and recorder with an appropriate book.

History: En. Sec. 4-113, Ch. 197, L. 1965.

32-2414. Relocation of utilities facilities—hearings—order. (1) After appropriate hearings, the commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal,

or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the federal-aid systems.

(2) The commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965.

32-2415. Relocation—costs. Seventy-five per cent (75 %) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the commission as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965.

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) Cost of relocation—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417. Certification and payment of claims. (1) All accounts and expenditures shall be certified by the state highway engineer and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds.

(2) The commission shall certify the fund against which the warrant is to be drawn and state the project to which the payment will apply.

(3) The commission shall keep accounts showing the amount of money received for each project and the itemized expenses therefor.

History: En. Sec. 4-117, Ch. 197, L. 1965.

32-2418. Prosecution for violation. The commission shall prosecute any person guilty of violation of this code.

History: En. Sec. 4-118, Ch. 197, L. 1965.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state of Montana, the state highway commission is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Montana and at such places as the state highway commission shall deem necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to the state highway commission in section 1 [32-2419] of this act, it shall be the duty of the commission to establish checking stations at convenient points on the major highways entering this state, and such checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965.

32-2421. Co-operation in use of ports of entry and checking stations. The state highway commission shall co-operate with all other agencies of this state, or any political subdivisions thereof, in the use of such ports of entry or checking stations, so that maximum use can be made of such facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965.

Effective Date

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

Budget

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

32-2422. Purposes of act. (1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to such highways.

(3) To entitle the state to receive and expend the three per centum (3%) nonmatching funds from the United States pursuant to the provisions of title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967. land for the restoration, preservation and enhancement of scenic beauty within and adjacent to federal-aid highways.

Title of Act
An act providing for the acquisition of

32-2423. Purposes for which federal funds to be expended. The state highway commission is authorized to expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967.

32-2424. Extent of interest acquired. The commission may acquire the fee simple or any lesser estate or interest as determined by the commission to be reasonably necessary to accomplish the purposes of this act. Such acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967.

32-2425. Expenditure of funds. The commission shall expend only nonmatching funds authorized under the provisions of section 319 (b) of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by this act.

History: En. Sec. 4, Ch. 286, L. 1967. "This act shall be effective on and after July 1, 1967."

Effective Date

Section 5 of Ch. 286, Laws 1967 read

CHAPTER 25—STATE HIGHWAY ENGINEER AND OTHER EMPLOYEES

Section 32-2501. State highway administrator and other employees.

32-2502. Commission employees—salaries.

32-2503. Division of maintenance and control.

32-2501. State highway administrator and other employees. (1) The commission may appoint an executive officer to be known as the "state highway administrator."

(2) The administrator shall be solely responsible to the commission and shall be charged with directing operation of the highway department and implementing the policies established by the commission.

(3) The administrator shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require.

(4) The commission may remove the administrator at any time for cause.

(5) Whenever used in these codes the term "state highway engineer" or "engineer" shall mean "state highway administrator."

History: En. Sec. 4-201, Ch. 197, L. 1965; amd. Sec. 1, Ch. 312, L. 1967.

Compiler's Note

This chapter was designated as Part 2 of Chapter 4 of the Highway Code, entitled "State Highway Engineer and Other Employees."

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "(1) The commission may appoint a professional engineer to be known as the 'state highway engineer,' and shall fix his salary; (2) The state highway engineer shall perform any acts or duties relating to the functions of the commission which

the commission may impose; (3) The engineer shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require; (4) The commission may remove the engineer at any time for cause."

Separability Clause

Section 2 of Ch. 312, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-2502. Commission employees—salaries. (1) The commission shall employ such personnel as it shall deem necessary and fix their compensation. Compensation shall be paid from funds deposited to the credit of the commission.

(2) The commission may, in its discretion, assign personnel for service to any county at the request of the board of county commissioners. The expense of this service shall be paid to the commission by the county.

History: En. Sec. 4-202, Ch. 197, L. 1965.

32-2503. Division of maintenance and control. The commission may organize and operate a division of maintenance and control to maintain highways constructed by the state and, by co-operation with boards of county commissioners, such other highways as the commission may deem necessary.

History: En. Sec. 4-203, Ch. 197, L. 1965.

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

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|---------|----------|--|
| Section | 32-2601. | Distribution and use of proceeds of gasoline dealers' license tax. |
| | 32-2602. | Limitation on expenditure. |
| | 32-2603. | Districts for apportionment of commission funds. |
| | 32-2604. | Construction or reconstruction of bridges. |
| | 32-2605. | Apportionment of state construction funds. |
| | 32-2606. | Apportionment of state funds to federal-aid primary highway system. |
| | 32-2607. | Apportionment of state funds to federal-aid secondary highway system. |
| | 32-2608. | Secondary highway information. |
| | 32-2609. | Apportionment of state funds to federal-aid interstate highway system. |
| | 32-2610. | Increases in expenditures. |
| | 32-2611. | Apportionment of state funds to federal-aid urban highways. |

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. Six-tenths of one per cent (.6%) of all money received in payment of license taxes under the provisions of this act shall be deposited in the

state park account in the earmarked revenue fund. All other money received, except that amount paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended by the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 32-2605 through 32-2607; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds as provided in section 84-1818, R.C.M. 1947. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than six-tenths of one per centum (.6%) is used for propelling boats on waterways of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967.

Compiler's Note

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

Amendments

The 1967 amendment substituted "Six-tenths of one per cent (.6%)" for "One

per cent (1%)" at the beginning of the first paragraph; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence of the first paragraph; in the second paragraph, added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence; and substituted "six-tenths of one per centum (.6%)" for "one per centum (1%)" in the second sentence of the second paragraph.

32-2602. Limitation on expenditure. (1) The cost to the state for administration, dissemination of public information, and engineering on the systems of federal-aid highways shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal-aid, and other available funds expended under the supervision of the commission.

(2) The annual expenditure for dissemination of public information shall not exceed one hundred and twenty-six thousand five hundred dollars (\$126,500).

History: En. Sec. 4-302, Ch. 197, L. 1965.

32-2603. Districts for apportionment of commission funds. All money available to the commission for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
- District 7. Lewis and Clark, Jefferson, Broadwater.
- District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
- District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
- District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.
- District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.
- District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L. 1965.

32-2604. Construction or reconstruction of bridges. (1) The commission may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the commission, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the engineer's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the engineer's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment provided for in section 4-309 [32-2606], and for the secondary system before the apportionment provided for in section 4-310 [32-2607].

History: En. Sec. 4-307, Ch. 197, L. 1965.

32-2605. Apportionment of state construction funds. Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds to the various federal-aid highway systems as may be required to match the amounts of federal aid available for expenditure on each respective system.

History: En. Sec. 4-308, Ch. 197, L. 1965.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the commission shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The commission shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The commission shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965.

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ($\frac{1}{4}$) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ($\frac{1}{4}$) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ($\frac{1}{4}$) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ($\frac{1}{4}$) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the

last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state board of equalization.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965.

32-2608. Secondary highway information. On or before August 30 of each year, the commission shall inform each board of county commissioners of: (1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Such other matters regarding secondary highway construction as the commission deems advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965.

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the commission in accordance with the provisions of the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965.

32-2610. Increases in expenditures. (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Fifteen per cent (15%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965.

32-2611. Apportionment of state funds to federal-aid urban highways. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each such city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

- Section** 32-2701. Creation of authority—members—salary—officers—seal.
 32-2702. Powers of authority.
 32-2703. Resolution—estimates of costs.
 32-2704. Limitations on placing of toll bridges.
 32-2705. Contents of petition.
 32-2706. Action by authority on petition.
 32-2707. Powers of authority in connection with toll bridge bond issues.
 32-2708. Reserve and contingency funds—deposit.
 32-2709. Additional bond terms permitted.
 32-2710. Toll charges—fixing—expiration.
 32-2711. Revenue fund—sinking fund.
 32-2712. Construction.

- 32-2713. State highway engineer—duties.
- 32-2714. Annual statement—records.
- 32-2715. Limitations on building bridges near toll bridges.
- 32-2716. Payment of bonds—free bridge.

32-2701. Creation of authority — members — salary — officers — seal.

(1) There is hereby created the Montana toll bridge authority, composed of members of the commission, who shall receive no compensation other than that received as members of the commission.

(2) The chairman of the commission shall be the chairman of the authority, and the state highway engineer shall be the secretary-treasurer. All contracts, bonds, and other instruments shall be executed in the name of the authority by the chairman and attested by the secretary-treasurer.

(3) The authority shall adopt a seal bearing its name which shall be affixed to such bonds, instruments, and records as the authority or the chairman may direct.

History: En. Sec. 4-401, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 4 of the Highway Code, entitled "Montana Toll Bridge Authority."

32-2702. Powers of authority. (1) The authority shall adopt rules and regulations for its own government and for the administration of this part [chapter] and the execution of the powers and duties hereby conferred.

(2) The authority may establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches, wherever found and determined to be necessary for advantageous, and practicable for crossing any stream or body of water.

(3) The authority may issue toll bridge revenue bonds to pay the cost of any toll bridge.

History: En. Sec. 4-402, Ch. 197, L.
1965.

32-2703. Resolution—estimates of costs. (1) Whenever the authority finds and determines that the construction of any toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of the toll bridge.

(2) The resolution shall contain preliminary estimates of:

(a) The cost of construction.

(b) The amount of money to be raised by the issuance of revenue bonds.

(c) The probable amounts of money, property materials, or labor, if any, to be contributed from other sources in aid of construction.

(3) The authority shall also estimate the costs of maintaining, repairing, and operating the toll bridge, and the revenues to be derived from it.

(4) No toll bridge shall be constructed unless the authority first finds and determines that the probable revenues will be sufficient to pay

the costs of maintaining, repairing, and operating it, and to pay the principal and interest on revenue bonds issued to pay its costs.

(5) The failure of the authority to make the estimates required by this section or to make them in proper form shall in no way affect the validity or enforceability of any revenue bonds.

History: En. Sec. 4-403, Ch. 197, L. 1965.

32-2704. Limitations on placing of toll bridges. (1) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles of either side of any free public bridge existing on that stream unless there shall first have been filed with the authority a petition requesting its construction.

(2) The petition shall be signed by:

(a) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county in which the toll bridge is proposed to be constructed; or

(b) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of both counties when the toll bridge is proposed to be constructed upon a stream which constitutes the boundary between two (2) counties.

History: En. Sec. 4-404, Ch. 197, L. 1965.

32-2705. Contents of petition. (1) The petition shall contain a statement showing the location of the proposed toll bridge and the locations of all free public bridges existing upon the same stream within a radius of fifty (50) miles of the proposed toll bridge. It shall also contain a concise statement of facts showing that the proposed construction is necessary, advantageous, and practicable.

(2) Several copies of the petition identical in form may be circulated. Each person circulating a copy must attach his affidavit that the signatures appearing thereon are genuine and that the signers knew the contents at the time of signing.

(3) All copies from each county shall be attached together as to form a single petition. The petition shall have attached to it before it is filed with the authority a certificate of the county clerk and recorder showing whether or not it has been signed by not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county.

(4) The county clerk and recorder shall transmit the petition to the authority.

History: En. Sec. 4-405, Ch. 197, L. 1965.

32-2706. Action by authority on petition. (1) The authority shall meet and consider the petition within thirty (30) days after it is filed. It shall be the sole judge of the sufficiency of the petition.

(2) If the authority finds that the petition bears the required number of signatures and is in proper form, and finds and determines that the construction of the proposed toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making that finding and determination. The resolution shall also contain the estimates and data required by section 4-403 [32-2703].

(3) The authority's finding of the sufficiency of the petition shall be conclusive in favor of any innocent holder of bonds issued as a result of the presentation of the petition.

History: En. Sec. 4-406, Ch. 197, L. 1965.

32-2707. Powers of authority in connection with toll bridge bond issues. (1) In connection with the issuance and in order to secure the payment of toll bridge bonds, the authority may:

(a) Pledge all or any part of the tolls, income, profit, and revenue of any such toll bridge, and covenant to pay such tolls, income, profit, and revenue into appropriate funds.

(b) Covenant to fix and establish such tolls, rates, and charges as will provide at all times enough funds to:

(i) Pay all costs of operation, maintenance, and repairs of the toll bridge.

(ii) Meet and pay the principal of and interest on all toll bridge bonds as they severally become due and payable.

(iii) Create such reserves for the principal and interest of such bonds and to meet contingencies in operation and maintenance as the authority shall determine.

(c) Make such additional covenants as to tolls, rates and charges as it shall deem necessary to secure the payment of bonds.

(2) No truck, trailer, or automobile licensed in the name of the state of Montana or the United States or any branch or department thereof shall be required to pay for crossing any toll bridge.

History: En. Sec. 4-407, Ch. 197, L. 1965.

32-2708. Reserve and contingency funds—deposit. (1) The authority may create a special fund or funds, in addition to those required by this part [chapter], for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any toll bridge.

(2) It may determine the depository or depositories in which such funds shall be deposited and the manner in which such deposits shall be secured. Any bank or trust company incorporated under the laws of this state may act as a depository and may furnish such indemnifying bonds or pledge such securities as may be required by the authority.

History: En. Sec. 4-408, Ch. 197, L. 1965.

32-2709. Additional bond terms permitted. (1) The authority may:

(a) Provide for replacement of lost, destroyed, or mutilated bonds.

(b) Covenant against extending the time for the payment of the principal of or interest on any toll bridge bonds, directly or indirectly in any manner.

(c) Prescribe and covenant as to the events of default and terms and conditions upon which any or all toll bridge bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(d) Covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation.

(e) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay toll bridge bonds, provide for their powers and duties, limit their liabilities, and provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(2) The authority may make such covenants and do any and all acts and things necessary or convenient or desirable in order to secure toll bridge bonds or to make them more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized. The legislative assembly intends to grant to the authority power to do all things in the issuance of toll bridge bonds and in providing for their security that may not be inconsistent with the constitution.

History: En. Sec. 4-409, Ch. 197, L. 1965.

32-2710. Toll charges—fixing—expiration. (1) The authority may fix and change rates of toll and other charges for all toll bridges built under the provisions of this part [chapter]. The rates and charges shall at all times be fixed at rates which will yield sufficient annual revenue to pay annual operating and maintenance expenses, to redeem and pay the principal of and interest on all bonds as they severally come due, and to create such reserves as the authority shall deem necessary.

(2) All tolls and other revenue shall constitute a trust fund for the security and payment of toll bridge bonds. They shall not be pledged for any other purpose as long as any of the bonds are outstanding and unpaid.

History: En. Sec. 4-410, Ch. 197, L. 1965.

32-2711. Revenue fund—sinking fund. (1) The authority shall adopt rules and regulations for the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and for the transfer therefrom to the appropriate sinking fund of money for the payment and redemption of bonds as they severally mature.

(2) The money remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds

shall be held and applied in accordance with the proceedings relating to the authorization of the bonds.

History: En. Sec. 4-411, Ch. 197, L. 1965.

32-2712. Construction. Whenever funds are available for the construction of any toll bridge, the commission shall let contracts by competitive bidding, after such notice and upon such terms as it shall prescribe.

History: En. Sec. 4-412, Ch. 197, L. 1965.

32-2713. State highway engineer—duties. The engineer shall have full charge of the construction, operation, and maintenance of all toll bridges authorized by the authority. Under the supervision of the authority, and subject to its rules and regulations, the engineer shall have charge of the collection of all tolls.

History: En. Sec. 4-413, Ch. 197, L. 1965.

32-2714. Annual statement—records. (1) The engineer shall keep full and complete accounts for each toll bridge constructed. Each year he shall cause to be prepared and filed in the office of the secretary of state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge.

(2) All books, records, and papers relating to toll bridges shall at all reasonable times [to] be open to the inspection of any citizen of the state.

History: En. Sec. 4-414, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "to" in subsection (2) to denote surplusage.

32-2715. Limitations on building bridges near toll bridges. So long as any of the bonds issued for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge for public use over or across the stream upon which the toll bridge is located within a distance of twenty (20) miles on either side of the toll bridge. This prohibition does not apply to bridges in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 4-415, Ch. 197, L. 1965.

32-2716. Payment of bonds—free bridge. When the bonds issued for the purpose of paying the cost of any toll bridge are retired, the cost of construction having thereby been repaid in full, the bridge shall thereafter be maintained and operated by the commission as a free bridge. The expense of any surveys and reports paid from the funds of the commission shall then be deemed fully repaid.

History: En. Sec. 4-416, Ch. 197, L. 1965.

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

- Section 32-2801. Powers and duties of county commissioners respecting county roads.
 32-2802. Right of way—contracts—control of traffic.
 32-2803. Plat books—surveyor—employees.
 32-2804. County contracts with state or federal agency.
 32-2805. Inspection of roads and construction work—compensation.
 32-2806. Purchase of machinery and materials.
 32-2807. Use of county road machinery.
 32-2808. Width of road.
 32-2809. Highways to follow subdivision or section lines.
 32-2810. Auto passes excluding livestock.
 32-2811. Auto passes on county roads.
 32-2812. Limit on amount expended in road district.
 32-2813. Reseeding of right of way areas.
 32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
 32-2815. Board and others to furnish information.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners shall have general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such county roads as are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, cause to be done whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make such reports relating to roads under its supervision as may be requested by the commission.

History: En. Sec. 5-101, Ch. 197, L. 1965.

Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled "Board of County Commissioners Responsibility for County Roads."

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction,

maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965.

32-2803. Plat books — surveyor — employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded therein with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map thereof, and a record of all proceedings with reference thereto.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform such other duties as may be prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(a) Nothing in this section shall be construed to alter or repeal the provisions of sections 5-308 and 5-309 of this chapter.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in part 3 (b) of this chapter (chapter 30 of this title)."

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967.

Compiler's Note

Chapter 197, Laws 1965, the Highway Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

Amendments

The 1967 amendment added "In coun-

ties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this title" within parentheses at the end of the section.

Effective Date

Section 3 of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

32-2804. County contracts with state or federal agency. Whenever construction of farm to market, secondary, or feeder roads is to be

financed in whole or in part by federal funds, and the United States secretary of commerce shall affirmatively find that some method other than competitive bidding is in the public interest, each board may:

(1) Enter into and contract jointly or independently with either the commission, the bureau of public roads, or any other federal agency to:

- (a) Acquire rights of way.
- (b) Survey and construct such roads.
- (c) Do any other thing essential and practical in securing such roads by force account, unit price, or otherwise.

History: En. Sec. 5-104, Ch. 197, L. 1965.

32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of twenty dollars (\$20) per day and actual expenses. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967.

ments to county surveyors and members of county boards of commissioners under subsection (2) from \$15 to \$20 per day.

Amendments

The 1967 amendment increased pay-

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road

machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965.

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L. 1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L. 1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road

fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the commission does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs thereof shall be paid by the commission.

History: En. Sec. 5-114, Ch. 197, L. 1965.

32-2815. Board and others to furnish information. The board and road supervisor of any county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the commission, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

- Section 32-2901. County to maintain bridges.
 32-2902. Bridges over streams in cities and towns.
 32-2903. Election to determine question of construction—bonds—special levy.
 32-2904. Removal of obstructions and repair of bridges.
 32-2905. Bridges under control and management of board—police regulations.
 32-2906. Construction and maintenance of bridges crossing county lines.
 32-2907. Ferries uniting two counties—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the commission.

History: En. Sec. 5-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, entitled "Board of County Commissioners Responsibility for Bridges and Ferries."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ($\frac{1}{2}$), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L. 1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L. 1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and water-courses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the

reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L. 1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section 32-3001. County road superintendent—appointment and compensation.
 32-3002. Duties of county road superintendent.
 32-3003. Accounts and statements.
 32-3004. Examination of superintendent's report—warrant for claims.
 32-3005. Equipment, tools, and implements for use of superintendent.
 32-3006. Employment of laborers—hiring of equipment.
 32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L.
1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L.
1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L.
1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L.
1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L.
1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

Section 32-3101.	Duty of board to construct roads and levy assessments.
32-3102.	Petition for construction or improvement of road.
32-3103.	Resolution of public interest.
32-3104.	Proceedings upon receipt of petition.
32-3105.	Proceedings at meeting.
32-3106.	Duties of committee and road superintendent.
32-3107.	Report of county road superintendent—order creating district.
32-3108.	Sharing of costs—order of board.
32-3109.	Payment of county's share of expense.
32-3110.	Formation and boundaries of district.
32-3111.	Assessment of lands in each part—lien.
32-3112.	Method of assessment.
32-3113.	Appointment of inspector—compensation of inspector and committee.
32-3114.	Construction by county—lien.
32-3115.	Apportionment of costs—assessment roll—contents.
32-3116.	Notice—confirmation—errors.
32-3117.	Correction of errors—lien.
32-3118.	Modes of payment of assessment.
32-3119.	Immediate payment—notice to landowners.
32-3120.	Contents of notice.
32-3121.	Installment payment procedure—county treasurer to collect.
32-3122.	Board provides method of payment.
32-3123.	Order for issuance of bonds—form and contents.
32-3124.	Notice in case of payment by special bonds—contents.
32-3125.	Payment of assessment—redemption by payment.
32-3126.	Issuance of special bonds to contractor—sale of bonds.
32-3127.	Payment of interest—retirement.
32-3128.	Collection of assessments by suit of owner of bonds.
32-3129.	Auditing and payment of claims and accounts.
32-3130.	Estimates of work completed—payment therefor.
32-3131.	Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1)
Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 4
of Chapter 5 of the Highway Code, en-
titled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds ($\frac{2}{3}$) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L.
1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L.
1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L.
1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. _____ in _____ county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L.
1965.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L.
1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L.
1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ($\frac{1}{2}$) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L.
1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L. 1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L. 1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L. 1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "im-

mediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect. (1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate of six per cent (6%) per annum. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L. 1965.

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest at the rate of six per cent (6%) per annum, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965.

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L.
1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L.
1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L.
1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No.

----- (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L. 1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L. 1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L. 1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money.

The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

32-3131. **Disposition of residue of funds.** (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

- Section 32-3201. Time for payment of fees.
 32-3202. Expiration date.
 32-3203. License not transferable.
 32-3204. Disposition of fees collected by county treasurer.
 32-3205. Deposit of state highway moneys.
 32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. **Time for payment of fees.** A person who owns or operates a vehicle subject to the fees provided in chapter 197, sections 6-201, 6-202, 6-203, 6-204, 6-205, 6-206, 6-207, 6-208, and 6-210 [32-3301 to 32-3308, 32-3310] and acts amendatory thereto shall pay the fees provided in this chapter.

Prior to or at the time of registration of such vehicle as required under Title 53, Revised Codes of Montana, 1947, and acts amendatory thereto, or prior to the operation of such vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967.

Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new

passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees."

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License not transferable. The certificate, registration or license issued hereunder is transferable only upon transfer of title or interest of the legal owner. It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965.

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, R.C.M. 1947, each county treasurer shall retain five per cent (5%) of the fees collected by the county treasurer for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the commission. Such remittance shall be made on forms furnished to the county treasurer by the commission.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967.

Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) All moneys received for the use of the commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the commission.

(3) All moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the commission.

(4) Hereafter, all moneys collected for the commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965.

32-3206. Additional tax by municipalities prohibited — exceptions
Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

- Section 32-3301. Additional fees on motor trucks and truck-tractors.
 32-3302. Additional fees on trailers and semitrailers.
 32-3302.1. Alternative additional fees on truck-trailer combinations.
 32-3303. Additional fees—gross weight over 42,000 pounds.
 32-3304. Additional fees—pole trailers, low-boys, livestock and mixer vehicles.
 32-3305. Additional fees—house trailers.
 32-3306. Additional fees—certain farm vehicles.
 32-3307. Additional fees—buses.
 32-3308. Additional fees—quarterly payment.
 32-3309. Failure to pay additional fees—penalty.
 32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking.
 32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or special vehicles.
 32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.
 32-3313. Temporary trip permits showing payment of fees—display.
 32-3314. Time for payment of fees by nonresidents.
 32-3315. Sales tax on new motor vehicles.
 32-3316. Violation—penalty.
 32-3317. Excess weight—penalties.

32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs. -----	\$ 7.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.50
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50
18,001 lbs. or more, and less than 20,000 lbs. -----	50.00
20,001 lbs. or more, and less than 22,000 lbs. -----	62.50
22,001 lbs. or more, and less than 24,000 lbs. -----	93.75

24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from \$6 to \$7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use	\$3.75
2,501 lbs. or more, and less than 6,000 lbs.	5.00
6,001 lbs. or more, and less than 8,000 lbs.	15.00
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable

from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302.1. Alternative additional fees on truck-trailer combinations.

In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, R.C.M. 1947, enacted as section 6-201, Laws of 1965, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs. -----	\$ 571.00
42,001 to 44,000 lbs. -----	631.00
44,001 to 46,000 lbs. -----	691.00
46,001 to 48,000 lbs. -----	752.00
48,001 to 50,000 lbs. -----	812.00
50,001 to 52,000 lbs. -----	871.00
52,001 to 54,000 lbs. -----	931.00
54,001 to 56,000 lbs. -----	992.00
56,001 to 58,000 lbs. -----	1,052.00
58,001 to 60,000 lbs. -----	1,112.00
60,001 to 62,000 lbs. -----	1,172.00
62,001 to 64,000 lbs. -----	1,233.00
64,001 to 66,000 lbs. -----	1,293.00
66,001 to 68,000 lbs. -----	1,352.00
68,001 to 70,000 lbs. -----	1,412.00
70,001 to 72,000 lbs. -----	1,473.00
72,001 to 74,000 lbs. -----	1,533.00
74,001 to 76,000 lbs. -----	1,593.00
76,001 to 78,000 lbs. -----	1,653.00
78,001 and over -----	65.50 per ton or fraction thereof.

Payment of the fees provided in this section shall exempt any semitrailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310 and 32-3312.

History: En. Sec. 7, Ch. 2, Ex. L. 1967.

Title of Act

An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until

federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semitrailers and house trailers and increasing the fees; providing that additional fees for each motor truck or truck-tractor,

based upon maximum gross loaded weight of combinations with trailers and semi-trailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967.

3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from \$50 to \$62.50.

Amendments

The 1967 amendment substituted "32-

32-3304. Additional fees—pole trailers, low-boys, livestock and mixer vehicles. There shall be paid and collected annually a fee equal to seventy-five per cent (75 %) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965.

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to seventy-five cents (\$.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used

by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars (\$6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendment made by both 1967 acts.

Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor * * * in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from \$4 to \$6.

Chapter 2 (Ex. Sess.), Laws of 1967, decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from \$4 to \$6.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of any vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L. 1965.

32-3309. Failure to pay additional fees—penalty. No vehicle licensed under the provisions of section 6-208 [32-3308] shall be operated over the public highways unless the owner or operator thereof within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of any such three-month period shall apply for and pay the required fee for a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highway after the expiration of said ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, shall be guilty of a misdemeanor. In addition he shall be required

to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police may impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol until such requirement is met.

History: En. Sec. 6-209, Ch. 197, L. 1965, amd. Sec. 2, Ch. 292, L. 1967.

Amendments

The 1967 amendment substituted "ten (10) calendar days or seven (7) business

days as provided by law, whichever is greater" for "ten (10) days" wherever found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) In lieu of the gross weight fees provided in sections 6-201 to 6-208 [32-3301 to 32-3308] of this chapter, the owner of any motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of sections 53-114, 53-122, and sections 6-201 and 6-203 [32-3301 and 32-3303] of this chapter.

(b) By registering such trailers in accordance with the provisions of sections 53-114 and 53-112, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of sections 6-202 and 6-203 [32-3302 and 32-3303] of this chapter on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) Vehicles on which fees are paid in accordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission.

(3) Nothing herein shall be construed as authorizing axle loads in excess to those established by section 32-1123.

History: En. Sec. 6-210, Ch. 197, L. 1965.

section 53-112 is apparently in error, and the intention may have been to refer to section 53-122.

Compiler's Note

The reference in paragraph (1) (b) to

32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or special vehicles. (1) Each truck, truck-tractor or bus shall have permanently marked in clearly visible letters and numbers either the maximum gross weight, or maximum gross weight of the combinations of vehicles, or seating capacity shall be at least two (2) inches in height and on the driver's side of the vehicle.

(2) Any vehicle registered and taxed as a farm, logging, livestock, ready-mix concrete, low-boy or special fee vehicle shall have in addition to

the above markings, and equally visible, the words "Farm Vehicle," "Logging Vehicle," "Livestock Vehicle," "Mixer Vehicle," "Equipment Vehicle" or "Special Vehicle."

History: En. Sec. 6-211, Ch. 197, L. 1965.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display.

(1) Temporary trip permits showing payment of the fees provided for in the last section shall be issued under such rules and regulations as may be prescribed by the commission. Such permit shall be displayed in the vehicle for which the fee has been paid at all times while such vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The commission may limit the operation of any such vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965.

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any commission office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965.

32-3315. Sales tax on new motor vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section shall mean automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

- (2) The sales tax shall be:
 - (a) One and one-half per cent ($1\frac{1}{2}\%$) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.
 - (b) One and one-eighth per cent ($1\frac{1}{8}\%$) of the list price during the second quarter of the year.
 - (c) Three-fourths ($\frac{3}{4}$) of one per cent (1%) during the third quarter of the year.
 - (d) Three-eighths ($\frac{3}{8}$) of one per cent (1%) during the fourth quarter of the year.
- (3) In case the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the highway commission may use any published price lists.
- (4) The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit to the earmarked revenue fund of the state highway account.
- (5) The new vehicle shall not be subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967.

Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor vehicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator shall be subject to the penalties stated in this section whenever the gross laden weight

Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

References

Swartz v. Berg, — M —, 411 P 2d 736.

of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross maximum weight marked upon the vehicle pursuant to section 6-211 [32-3311], or

(b) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued pursuant to section 53-107, or

(c) The gross vehicle weight shown on the gross vehicle weight receipt issued pursuant to section 53-620.

(2) The operator shall:

(a) Immediately unload all cargo in excess of the gross maximum weight for which the vehicle has been taxed.

(b) Immediately thereafter pay to the nearest county treasurer the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

(c) Immediately thereafter reload the cargo unloaded.

(3) If the gross maximum weight marked upon the vehicle is less than gross vehicle weight shown on the owner's registration tax receipt or on the gross vehicle weight receipt, and the receipt shows that the proper fee has been paid for the weight stated thereon, there shall be no penalty for improper marking.

History: En. Sec. 6-217, Ch. 197, L. 1965.

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY TRANSPORTERS

Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.

32-3403. Disposition of funds collected.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.

32-3406. Exemptions from fees.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars (\$100). Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices

showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965. of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

Compiler's Note
This chapter was designated as Part 4

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the registrar of motor vehicles a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by the registrar of motor vehicles.

History: En. Sec. 6-402, Ch. 197, L. 1965.

32-3403. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent (5 %) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95 %) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the commission.

History: En. Sec. 6-403, Ch. 197, L. 1965.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

Section	32-3501.	Toll bridge bond issues—authorization—nature.
	32-3502.	Toll bridge bonds—maturity—interest.
	32-3503.	Toll bridge bonds—sale—registration.
	32-3504.	Toll bridge bonds—proceeds—insufficiency—surplus.
	32-3505.	Lien on moneys received from bonds.
	32-3506.	Separate funds—depositories.
	32-3507.	Construction fund—disposition of surplus.
	32-3508.	Revenue fund.
	32-3509.	Sinking fund.

32-3501. Toll bridge bond issues—authorization—nature. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds for the purpose of paying the cost of any toll bridge. Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued. The bonds authorized by each resolution shall constitute a separate series identifiable by a series letter or letters.

(2) Each bond issued by the authority shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund provided for that purpose. Toll bridge bonds shall be secured only by the revenues from the toll bridge or toll bridges constructed with the proceeds of such bonds.

(3) All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities [Chapter 8, Title 87A].

(4) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

History: En. Sec. 6-501, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 5 of Chapter 6 of the Highway Code, entitled "Bond Issues for Toll Bridges."

32-3502. Toll bridge bonds—maturity—interest. (1) Toll bridge bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by the authority's resolution. However, they may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(2) The authority shall determine:

(a) The rate of interest such bonds shall bear, not exceeding six per cent (6 %) per annum.

(b) The time or times of payment of such interest.

(c) The form of the bonds and the interest coupons to be attached thereto.

(d) The manner of executing the bonds and coupons.

(e) The denomination or denominations of the bonds; and

(f) The place or places of payment of principal and interest, which may be at any bank or trust company.

(3) Prior to the preparation of definitive bonds, the authority may issue temporary bonds with or without coupons under the same restrictions as definitive bonds. Such bonds shall be exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

History: En. Sec. 6-502, Ch. 197, L. 1965.

32-3503. Toll bridge bonds—sale—registration. (1) The bonds authorized may be issued and sold from time to time, in such amounts as shall be determined by the authority. The authority may sell said bonds in such manner and for such price as it may determine to be in the best interests of the state. However, no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of over six per cent (6 %) per annum to the purchaser upon the amount paid therefor.

(2) The authority may make provision for the registration of toll bridge bonds in the name of the owner as to principal alone or as to both principal and interest.

History: En. Sec. 6-503, Ch. 197, L. 1965.

32-3504. Toll bridge bonds—proceeds—insufficiency—surplus. (1) The proceeds of toll bridge bonds shall be used solely for the payment of the cost of the toll bridge constructed according to law for the payment of which such bonds were issued, and shall be disbursed in such manner and under such restrictions as the authority may provide.

(2) If such proceeds shall be less than the cost of any toll bridge, additional bonds may be issued in like manner to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the bonds, they shall be deemed to be of the same issue, entitled to payment from the same fund, and of equal preference as the bonds first issued for the same toll bridge.

(3) If such proceeds exceed the cost of any toll bridge, the surplus shall be paid into the fund provided for the payment of principal and interest of such bonds.

History: En. Sec. 6-504, Ch. 197, L. 1965.

32-3505. Lien on moneys received from bonds. There is hereby created and granted a lien in favor of the holders of any bonds issued by the authority for payment of the cost of a particular toll bridge upon all moneys received from any such bonds until such moneys are applied in payment of such bonds.

History: En. Sec. 6-505, Ch. 197, L. 1965.

32-3506. Separate funds—depositories. (1) The authority shall create three (3) separate funds for the bonds of each series issued:

(a) The toll bridge construction fund.

(b) The toll bridge revenue fund.

(c) The toll bridge sinking fund. Each fund shall be identified by the same series letter or letters as the bonds of such series.

(2) The money in the funds shall be deposited in any depository or depositories and secured in such manner as the authority may determine. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 6-506, Ch. 197, L. 1965.

32-3507. Construction fund—disposition of surplus. (1) The proceeds of the bonds of each series issued by the authority shall be placed to the credit of the appropriate construction fund which shall at all times be kept segregated from all other funds.

(2) There shall also be credited to the appropriate construction fund:

(a) All interest accrued upon the bonds.

(b) All interest received upon the deposits of moneys in the fund.

(c) All money received by grant or donation from the United States or any other source for the construction of such toll bridge.

(3) The moneys in each construction fund shall be disbursed to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment and the cost of such toll bridge shall be added to the appropriate sinking fund.

History: En. Sec. 6-507, Ch. 197, L. 1965.

32-3508. Revenue fund. All tolls collected by the engineer under the supervision of the authority and subject to its rules and regulations shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

History: En. Sec. 6-508, Ch. 197, L. 1965.

32-3509. Sinking fund. (1) In the resolution authorizing the issuance of each series of bonds, the authority shall provide for paying into the appropriate sinking fund at stated intervals all moneys then remaining in

the revenue fund after paying all costs of operation, maintenance and repair of the toll bridge with respect to which such revenue fund was created.

(2) All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

- (a) The interest upon the bonds as it becomes due.
- (b) The necessary fiscal agency charges for paying bonds and interest.
- (c) The principal of the bonds as they fall due.
- (d) Any premiums upon bonds retired by call or purchase.

(3) Prior to the issuance of any bonds in a series the authority may provide by resolution for using the sinking fund or any part of such fund to purchase outstanding bonds payable from such fund. The price to be paid cannot exceed the price, if any, at which such bonds will be payable or redeemable at the next interest date. All bonds redeemed or purchased shall be canceled and no bonds issued in place thereof.

(4) The resolution authorizing any bonds may provide for a reserve for the payment of principal and interest. The moneys in each sinking fund, less such reserve, if not used within a reasonable time for the purchase of bonds for cancellation, shall be used to redeem bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 6-509, Ch. 197, L. 1965.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION

Section 32-3601. General road tax.

32-3602. Special bridge taxes—levy and collection.

32-3603. Suburban railway to pay county for use of bridge.

32-3604. Special tax for construction and maintenance.

32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967.

Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

Compiler's Note

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the Highway Code, entitled "County Finance." This chapter was designated as Part 1 of

Amendments

The 1967 amendment increased the tax limit in subsection (1) from 10 to 12 mills.

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable prop-

erty in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twelve million dollars (\$12,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965.

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ($\frac{1}{4}$) nor more than one-half ($\frac{1}{2}$) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [$\frac{1}{4}$] nor more than one-half [$\frac{1}{2}$]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the

name of the county: "Shall there be an additional levy of _____ mills upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?

☐ Yes

☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.
 32-3702. Population centers—city road fund—county road fund.
 32-3703. Population centers—use of city road fund.
 32-3704. Other counties—county road fund—city road fund.
 32-3705. Counties other than population centers—use of city road fund.
 32-3706. Use of county road fund.
 32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

Amendments

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

Repealing Clause

Section 2 of Ch. 89, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

History: En. Sec. 7-203, Ch. 197, L. 1965.

32-3704. Other counties—county road fund—city road fund. (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a "city road fund" and a "county road fund."

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways, which are not either state or federal highways, situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways, which are not either state or federal highways, outside of such corporate limits; providing that state or federal roads may be counted if they are by written agreement maintained by the city or county.

History: En. Sec. 7-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 16, L. 1967.

Amendments

The 1967 amendment inserted "which

are not either state or federal highways" after "streets and highways" each time those words appear and added the proviso at the end of subsection (2).

32-3705. Counties other than population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate "city road fund," which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-205, Ch. 197, L. 1965.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965.

32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, shall not be subject to registration of that equipment or be required to pay the fees and charges provided for in the chapter "State Finance" [chapter 32 to 35 of this title]. Prior to any movement on the highways, however, each piece of equipment shall display an equipment identification plate attached thereto.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars (\$5); provided, that such equipment for which a special mobile equipment plate is sought, shall be subject to the assessment of personal property taxes either on the date application is made for such plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March, provided further, that it is a condition precedent to the issuance of a special mobile equipment plate that the personal property taxes so assessed against the special mobile equipment, be paid. The fees collected under this act shall belong to the county road fund.

(3) The identification plate shall expire on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from the provisions of this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967.

(2), inserted the provisos after "five dollars (\$5)"; and, in subdivision (3), substituted "March 31" for "December 31."

Amendments

The 1967 amendment, in subdivision

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

- Section 32-3801. County commissioners may issue bonds.
 32-3802. Negotiations for refunding.
 32-3803. Single purpose highway—bridge.

- 32-3804. Limitation on amount of bonds—issuance in excess of limitations void.
32-3805. Term—power to redeem—maximum interest.
32-3806. Form of bonds.

32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5 %) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds the constitutional limitation of five per cent (5 %) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965.

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent ($2\frac{1}{2}\%$) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent ($2\frac{1}{2}\%$), but will not exceed five per cent (5%) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

(4) The words "value of the taxable property" are used in this section in the same sense as in section 5 of article 13 of the constitution and shall be given the same meaning and construction.

History: En. Sec. 7-304, Ch. 197, L. 1965.

32-3805. Term—power to redeem—maximum interest. (1) No bonds issued under subsection (1) of section 7-301 of this part [32-3801] shall be for a longer term than twenty (20) years.

(2) No bond issued under subsection (2) of that section shall be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) The maximum rate of interest which any bonds shall bear is six per cent (6%) per annum. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965.

section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

Compiler's Note

The reference in subsection (2) of this

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section 32-3901. Rights acquired by public in highway.
 32-3902. General power of commission to acquire interests in property.
 32-3903. Purposes for which property acquired.
 32-3904. Exercise of right of eminent domain—presumption.
 32-3905. Acquisition of whole parcel—sale of excess.
 32-3906. Power to acquire for future.
 32-3907. Road building materials.
 32-3908. No compensation in certain cases—exceptions.
 32-3909. Exchange of interests in real property.
 32-3910. Sale of interests in real property.
 32-3911. Conduct of sale.
 32-3912. Option of original owner or successor in interest to purchase at sale price.
 32-3913. Private sale if no bid or offer.
 32-3914. Sale of personal property—maps, books, other printed matter.
 32-3915. Conveyances—execution—contents.
 32-3916. Rendering irrigable lands unusable—unpaid construction costs.
 32-3917. Abandonment or vacation of federal-aid or state highways.
 32-3918. Highway crossing railroad, canal, or ditch.
 32-3919. Rights of way for toll bridges.
 32-3920. Acquisition of property for controlled access facility.

32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as **Part 1** of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. General power of commission to acquire interests in property. Notwithstanding any other provision of law, the commission may acquire by purchase or any other lawful manner any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future highway purposes. The commission may acquire a fee simple or any lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965.

32-3903. Purposes for which property acquired. The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and conjectural and not within the purpose of former section 32-1615 (c). *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being moved to allow construction of public highways. *State ex rel. De Puy v. District Court*, 142 M 328, 384 P 2d 501.

Rental of Unused Right of Way

The 1961 amendment of former section 32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State Highway Commission*, 141 M 253, 370 P 2d 486, 488.

Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the commission cannot acquire lands or other property or interests therein at a price or cost which it deems reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts a resolution declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 8-103 [32-3903].

(b) The interest described in the resolution and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The resolution shall create and establish a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through

town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the com-

mission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Necessity of Use

Even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, condemnor still has discretion to determine the location, route and area of the land to be taken. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Selection of Route

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in such shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the commission may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in such a shape or size as to come within the provisions of section 11-614, the commission shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965.

32-3906. Power to acquire for future. (1) The power conferred by this chapter [chapters 39 and 40 of this title] to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The commission may lease unused portions of any lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on such terms and conditions as it may fix. The commission may repair, maintain, and care for such property in order to secure rent therefrom.

(3) All rent received shall be deposited to the credit of the commission.

History: En. Sec. 8-106, Ch. 197, L. 1965.

32-3907. Road building materials. (1) Any right of way or easement acquired by the commission for construction, operation, repair, reconstruction, or maintenance of highways shall include, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of any and all gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of this chapter [chapters 39 and 40 of this title], such gravel or materials shall be deemed to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the commission files a description and plan as provided in section 4-113 [32-2413] of this code, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of any buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 4-113 [32-2413] shall apply to crops or similar improvements planted on the lands described. They shall be governed by the provisions of section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965.

32-3909. Exchange of interests in real property. (1) The commission may determine that any interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of any highway. It may then exchange any such interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The commission may establish the manner and terms and conditions for such exchange.

(2) The owner from whom such interest was originally acquired by the state, or his successor in interest, shall have the right to require the commission to offer such land for sale in the manner set forth in sections 8-110 and 8-111 [32-3910 and 32-3911]. The commission shall notify such owner or successor in interest of its intention to exchange such interest. The owner shall make his demand for sale by registered mail to the commission within ten (10) days after receipt of notice from the commission.

History: En. Sec. 8-109, Ch. 197, L. 1965.

32-3910. Sale of interests in real property. The commission may sell any interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the commission may decide. The sale shall be conducted as provided in section 8-111 [32-3911].

History: En. Sec. 8-110, Ch. 197, L. 1965.

32-3911. Conduct of sale. (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the commission at the capitol.

(2) Before any sale of any interest having a value in excess of one hundred dollars (\$100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-111, Ch. 197, L. 1965.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the commission by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965.

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the commission receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At such sale, the commission may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-113, Ch. 197, L. 1965.

32-3914. Sale of personal property—maps, books, other printed matter. (1) The commission may sell at public or private sale, as it may determine, any interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway.

(2) The commission may sell at public or private sale, as it may determine, maps, books, pamphlets, or other printed matter, prepared or acquired by the commission. The commission may sell copies of any highway records to the public and may set reasonable prices therefor.

(3) The proceeds from sales made under the provisions of this section shall be paid into the state treasury to the credit of the commission.

History: En. Sec. 8-114, Ch. 197, L.
1965.

32-3915. Conveyances—execution—contents. (1) Any land or interest therein sold by the commission shall be conveyed only when full payment has been made therefor. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under the provisions of this part [chapter].

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L.
1965.

32-3916. Rendering irrigable lands unusable—unpaid construction costs. Whenever the commission acquires irrigable land for highway purposes, or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

History: En. Sec. 8-116, Ch. 197, L.
1965.

32-3917. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L.
1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L.
1965.

32-3919. Rights of way for toll bridges. (1) The authority may acquire by purchase or otherwise necessary rights of way for any toll bridge and approaches. It may exercise the right of eminent domain in the name of the state for those purposes.

(2) Whenever the authority cannot acquire by purchase any right of way which it deems necessary, it may direct the attorney general or any county attorney to procure it by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landowners.

(3) A right of way is hereby given, dedicated, and set apart for toll bridges and approaches thereto, through, over, upon, or across:

- (a) Any property of the state, including highways.
- (b) Any county road.
- (c) Any street or alley.

Acquisition and use for toll bridge and approach purposes shall be deemed a superior and more necessary public use than the public use or purpose to which the highway, road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-119, Ch. 197, L. 1965.

32-3920. Acquisition of property for controlled access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

Section 32-4001. Rights of way for county roads.

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.

32-4003. Contents of petition.

32-4004. Investigation of petition—notice.

- 32-4005. Opening of road—survey.
- 32-4006. Determination of damages—declaration as road.
- 32-4007. Award of damages deemed rejected—proceedings to secure right of way.
- 32-4008. Damages and expenses to be paid out of county road fund.
- 32-4009. Change of road upon petition.
- 32-4010. Notice to district supervisor of opening of county road.
- 32-4011. Record of opening or changing road.
- 32-4012. Deeds and judgments for right of way—recording.
- 32-4013. County road crossing railroad, canal or ditch.
- 32-4014. Abandonment or vacation of county roads.
- 32-4015. Stock lanes.
- 32-4016. Board to transfer responsibility for right of way.
- 32-4017. Acquisition of property for public ferries and wharves.
- 32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. 1965. of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

Compiler's Note

This chapter was designated as Part 2

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

- (2) The general route thereof.
- (3) The lands and owners affected.
- (4) Whether the owners who can be found consent thereto.
- (5) Where consent is not given, the probable cost of the right of way.
- (6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of

the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L.
1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L.
1965.

32-4006. Determination of damages—declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L.
1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for

in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L.
1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L.
1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L.
1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L.
1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L.
1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L.
1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L.
1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L.
1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L.
1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. Each board shall transfer its control over, and responsibility for, any county road when the commission notifies it that: (1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the commission.

History: En. Sec. 8-216, Ch. 197, L. 1965.

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

Section 32-4101. Letting of contracts on state and federal-aid highways.

32-4102. Competitive bidding.

32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

Compiler's Note

Chapters 41 and 42 of this title were

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

History: En. Sec. 9-102, Ch. 197, L. 1965.

32-4103. Bidder's security—contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS

- Section 32-4201. Contracts for county roads.
 32-4202. Bids on county road contracts—award of contract.
 32-4203. County road contractors to furnish bonds.
 32-4204. Letting of contract for bridge.
 32-4205. Letting of contract by local improvement district—bids.
 32-4206. Improvement district contract—award.
 32-4207. Execution of contract by board—limit on liability.

32-4201. Contracts for county roads. (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965. of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

Compiler's Note

This chapter was designated as Part 2

32-4202. Bids on county road contracts—award of contract. Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the commission has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

32-4205. Letting of contract by local improvement district—bids.

(1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

- Section 32-4301. Policy.
 32-4302. Definitions.
 32-4303. Designation as controlled access highway—resolution—findings.
 32-4304. Designation as controlled access highway—petition from city or county.
 32-4305. Powers of highway authorities.
 32-4306. Design of controlled access facility—entrance and exit restricted.
 32-4307. New and existing facilities—elimination of grade crossings.
 32-4308. Existing roads and streets as service roads.

- 32-4308.1. Maintenance of frontage roads.
- 32-4309. Marking of controlled access highway or facility with signs.
- 32-4310. Commercial enterprise or structure prohibited.
- 32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to: (1) Highways included by the bureau of public roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-4302. Definitions. When used in this chapter: (1) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means all portions of any interstate highway, throughway, or throughway intersection which the commission shall determine and designate for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view. It shall also mean those portions of spurs to the interstate highway system which the commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes all streets, alleys, public roads, private roads, and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(4) "Existing highway" means and includes all highways, roads, and streets established constructed, and in use on March 2, 1955. It shall not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means any state highway designated by agreement between the commission and the secretary of commerce as part of the federal-aid primary system and any highway so designated

as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and any public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965.

32-4303. Designation as controlled access highway—resolution—findings. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The requirement by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution.

(3) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965.

32-4304. Designation as controlled access highway—petition from city or county. (1) No portion of a throughway or throughway intersection, or other federal-aid or state highway within the limits of an incorporated city or town shall be designated a controlled access highway except upon petition in writing from its governing body.

(2) If the portion lies wholly or partially outside of any such corporate limits, the petition must come from the board of the county within which the portion is located.

(3) Any such petition, once filed with the commission, shall be irrevocable unless the commission concurs in a request to revoke it.

History: En. Sec. 10-104, Ch. 197, L. 1965.

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads, each authority shall be subject to the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965.

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways

of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965.

32-4308.1. Maintenance of frontage roads. All frontage roads shall be maintained by the state highway commission of the state of Montana.

History: En. Sec. 1, Ch. 90, L. 1965.

Title of Act

Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

An act to provide for maintenance of frontage roads and amending section 32-2002 to define "frontage road."

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L. 1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.
 32-4402. Injuries to highways and trees.
 32-4403. Excavations across highways—permits and bridging.
 32-4404. Liability for permitting water to overflow.
 32-4405. Highway encroachments—power to remove.
 32-4406. Notice to remove encroachment.
 32-4407. Penalty for failure to remove encroachment promptly.
 32-4408. Removal of encroachment—actions—prosecution of offenses.
 32-4409. Prosecution by county attorney.
 32-4410. Dumping garbage or other debris or refuse.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Injuries to highways and trees. (1) The malicious injury of any highway, bridge, private way, or guidepost or inscription thereon is punishable as provided in sections 94-3201 and 94-3202.

(2) Every person who, without authority, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway is punishable as provided in section 94-3202 (2).

History: En. Sec. 11-102, Ch. 197, L. 1965.

Compiler's Note

Section 94-3201, referred to at the end of subsection (1) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

32-4403. Excavations across highways—permits and bridging. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104, Ch. 197, L. 1965.

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway

and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965.

32-4408. Removal of encroachment—actions—prosecution of offenses. (1) If the encroachment is denied, the road supervisor shall commence in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965.

32-4409. Prosecution by county attorney. The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965.

32-4410. Dumping garbage or other debris or refuse. (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding twenty-five dollars (\$25), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of this section in or upon any public recreational property.

History: En. Sec. 11-110, Ch. 197, L. 1965.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4513. Purposes of act.

32-4514. Definitions.

32-4515. License required.

32-4516. Issuance of license—fee—term—renewal.

32-4517. Restrictions as to location.

32-4518. Junkyards lawfully in existence.

32-4519. Regulations governing screening.

32-4520. Authority to acquire interest in land for screening and removal of junkyards.

32-4521. Injunction.

32-4522. Agreements with the United States.

32-4523. Interpretation.

32-4501 to 32-4512. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of

junkyards along roads, were repealed by Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; re-

quiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway com-

mission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

History: En. Sec. 2, Ch. 285, L. 1967.

32-4515. License required. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license from the commission.

History: En. Sec. 3, Ch. 285, L. 1967.

32-4516. Issuance of license—fee—term—renewal. The commission shall have the sole authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined. It shall charge for each such license a fee of twenty-five dollars (\$25) payable annually in advance. All licenses issued under this section shall expire on the January 1, following the date of issue. A license may be renewed from year to year upon paying to the commission the sum of twenty-five dollars (\$25) for such renewal. Proceeds from all license fees shall be deposited in the earmarked revenue fund to the credit of the state highway commission and be subject to disbursement on the order of the commission to defray the expense of administering the provisions of this act.

History: En. Sec. 4, Ch. 285, L. 1967.

32-4517. Restrictions as to location. No license shall be granted for the establishment, maintenance or operation of a junkyard within one thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967.

32-4518. Junkyards lawfully in existence. (1) Any junkyard lawfully in existence on the effective date of this act which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate or primary systems shall be fenced or screened, if feasible, by the commission at locations on the highway right of way or in areas acquired for such purposes outside the right of way so as not to be visible from the main traveled way of any such highway.

(2) Notwithstanding any other provision of this act, any junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

History: En. Sec. 6, Ch. 285, L. 1967.

32-4519. Regulations governing screening. The commission may promulgate rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act.

History: En. Sec. 7, Ch. 285, L. 1967.

32-4520. Authority to acquire interest in land for screening and removal of junkyards. (1) When the commission determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the commission determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The commission shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967.

32-4521. Injunction. The commission may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967.

32-4522. Agreements with the United States. The commission may enter into agreements with the United States secretary of transportation as provided in title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements.

History: En. Sec. 10, Ch. 285, L. 1967.

32-4523. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or

more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of act.

32-4602. Definitions.

32-4603. Montana highway traffic safety board.

32-4604. Organization.

32-4605. Duties.

32-4606. Funds.

32-4607. Local programs.

32-4601. Purpose of act. For the purpose of promoting the public safety, health and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is hereby declared to be in the public interest to establish a highway traffic safety program; provide for the administration thereof; implement, modernize and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings and surface treatment to improve safety thereof; establish an effective traffic control system; promote the adoption of a uniform vehicle code and law; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967.

Title of Act

An act for the establishment of a state highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection and expenditure of monies; providing for

programs for driver education training and certification of instructors, regulation of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing, revocation and regulation of drivers and operators of all motor vehicles.

32-4602. Definitions. (1) As used in this act, "governor" shall mean the governor of the state of Montana.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents and deaths, injuries to persons and damage to property. Such program shall be in accordance with uniform standards as are or may be established by the secretary of commerce of the United States under title 23, United States Code Annotated, as amended. Nothing herein shall restrict or prohibit the establishment of standards which enlarge or implement the federal standards.

(3) "Political subdivisions" shall mean every county, incorporated city or town and school district within the boundaries of the state.

(4) "Board" shall mean the Montana highway traffic safety board.

History: En. Sec. 2, Ch. 177, L. 1967.

32-4603. Montana highway traffic safety board. There is hereby created a Montana highway traffic safety board. The board shall be appointed by the governor.

History: En. Sec. 3, Ch. 177, L. 1967.

32-4604. Organization. The Montana highway traffic safety board shall meet once each month at the state capitol. It shall provide for office space, clerical help and such other personnel as may be necessary to carry out the intent of this act.

History: En. Sec. 4, Ch. 177, L. 1967.

32-4605. Duties. The governor shall be responsible for the administration of the highway traffic safety program. The governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this state, is hereby empowered to contract and to do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of such programs, certification of teachers, and the acceptance, allocation and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947.

It shall be the duty of the board to advise and assist the governor in all matters of highway safety, and to establish comprehensive training programs, including, but not limited to, establishment and regulation of driver training schools and certification of said schools and instructors; establishment of adult training and retraining programs; to develop and procure practice driving facilities, simulators and other teaching aids for school and driver training use; to establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; to establish a uniform system of driver licensing, including, but not limited to, mental and physical standards, and to prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967.

1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Compiler's Notes

The Federal Highway Safety Act of

32-4606. Funds. The governor and the highway traffic safety board is hereby authorized to enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be expended by the political subdivisions of said state in carrying out local approved highway traffic safety programs. Except as provided in this act, the governor is authorized to accept all gifts, money and funds to implement the purposes of this act; the expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of such expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967.

32-4607. Local programs. Except as provided in this act, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds shall be expended unless such approval is obtained. All local and state officials are hereby instructed and directed to co-operate with the governor and highway traffic safety board to accomplish the purposes of this act. The governor is hereby empowered to administer the highway traffic safety programs of this state and those of its political subdivisions, all in accordance with this act and federal rules and regulations in the implementation thereof.

History: En. Sec. 7, Ch. 177, L. 1967.

tional or void, the remainder of this act shall continue in full force and effect."

Separability Clause

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitu-

Repealing Clause

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—ZONING AND ADVERTISING REGULATION
ALONG HIGHWAYS

Section 32-4701. Declaration of policy.

32-4702. Definitions.

32-4703. Limitations on outdoor advertising.

32-4704. Areas hereby zoned commercial.

32-4705. Unzoned areas.

32-4706. Regulations—customary usages.

32-4707. Permits.

32-4708. Removal of nonconforming signs.

32-4709. Compensation for removal of signs.

32-4710. Unlawful advertising.

32-4711. Enforcement.

32-4712. Agreements with the United States.

32-4713. Guarantee against loss of funds.

32-4714. Congressional action or nonaction.

32-4701. Declaration of policy. The legislature recognizing the public investment in highways and in justification of these expenditures, particularly the cost of maintenance which is borne wholly by state funds, finds and declares that it is necessary to promulgate a public policy of state zoning with uniform application adjacent to the interstate and primary systems within this state to promote their maximum utilization by encouraging the development of roadside businesses to serve the needs and pleasures of the traveling public, as well as to stimulate tourism, commerce, and for purposes of planning the general growth of the state's economy. Further, desiring to insure reasonable compliance with the Highway Beautification Act of 1965, it is the intention of the legislature in this act to provide a statutory basis for the regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems as declared herein and by congress in title 23, United States Code, "Highways."

History: En. Sec. 1, Ch. 287, L. 1967.

Compiler's Notes

The Highway Beautification Act of 1965, referred to in the second sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Title of Act

An act to provide for the zoning by the legislature of certain lands adjacent to the interstate and primary system highways as commercial and for zoning and rezoning in certain cases by the boards

of county commissioners, or through their authority in accordance with presently existing or hereafter enacted statutes; to provide that the zoning hereby effected shall not, in itself, affect any taxes levied against real property or any assessment or assessment classification; to provide for the control of outdoor advertising adjacent to the interstate and primary systems; to provide for the administration of such outdoor advertising controls; all in conformity with the Federal Highway Beautification Act of 1965; and containing a severability clause.

32-4702. Definitions. As used in this act:

(a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of commerce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(b) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of com-

merce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(c) "Sign" or "outdoor advertising" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main-traveled way of the interstate or primary systems.

(d) "Erect" means to place, construct, create, or bring into being a sign, display or device, but does not include changing copy upon, or the repair or replacement of, an existing legal sign, display or device.

(e) "Maintain" means to allow to exist.

(f) "Unzoned commercial or industrial area" means an area as defined and determined under section 5 [32-4705].

(g) "Municipality" means an incorporated city, town or village, but does not include counties, townships, or other rural areas.

History: En. Sec. 2, Ch. 287, L. 1967.

32-4703. Limitations on outdoor advertising. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, no sign shall, after January 1, 1968, be erected or maintained within six hundred sixty (660) feet of the nearest edge of the right of way and visible from the main-traveled way of any highway which is a part of the interstate or primary system in this state, except the following:

(a) Official signs, including informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers, above ground cable closures, and directional signs and notices, which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, as authorized or required by law, subject to national standards to be promulgated by the secretary of commerce or the secretary of transportation.

(b) Signs advertising the sale or lease of property upon which they are located.

(c) Signs advertising activities conducted, services rendered, goods sold, stored, produced or mined, or the name of the enterprise on the property upon which they are located.

(d) Signs in areas which are now or hereafter zoned industrial, commercial, or the like, under section 4 [32-4704] or otherwise, subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

(e) Signs in unzoned commercial or industrial areas, which now or hereafter qualify as such, as defined in, and determined under section 5 [32-4705], subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

History: En. Sec. 3, Ch. 287, L. 1967.

32-4704. Areas hereby zoned commercial. (a) The legislature, to the extent hereinafter provided, and to effectuate the declared purposes of this act, hereby zones all of the following described lands located outside of

municipalities and lying within six hundred sixty (660) feet of the nearest edge of the right of way of any highway which is part of the interstate and primary system, as commercial, effective as of the effective date of this act:

(1) For a distance of ten (10) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the first class as defined in section 11-201, R.C.M. 1947;

(2) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the second class as defined in section 11-201, R.C.M. 1947;

(3) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the third class as defined in section 11-201, R.C.M. 1947;

(4) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities classified as towns in section 11-201, R.C.M. 1947;

(5) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the limits of unincorporated cities or towns.

(6) For a distance of five (5) miles outside of and beyond the intersection of said highways, or of the intersections of said highways with state secondary system highways, directly along, without deviation from, the routes of all such highways from the point of intersection; and

(7) For a distance of five (5) miles directly along and without deviation from, any interstate highway in both directions from any interchange located thereon.

The zoning, which is effected hereby, is subject to the exceptions specified in subsection (b) and to zoning by the several boards of county commissioners, or under their authority, as provided in subsection (e).

(b) Lands not so zoned. No lands are hereby zoned commercial, as aforesaid, which are:

(1) Within five hundred (500) feet of any building used primarily as a residence, unless the owner of the building consents in writing to the particular commercial use or uses to be made of such lands;

(2) In, or within five hundred (500) feet of, any official park, garden, or forest preserve, publicly owned, controlled, and maintained, or within five hundred (500) feet of a church or school;

(3) In, or within five hundred (500) feet of, any officially designated historical battlefield, or within five hundred (500) feet of any museum, publicly owned, controlled and maintained;

(4) In, or within five hundred (500) feet of, any official picnic grounds or swimming beach, publicly owned, controlled, and maintained, or any golf course, publicly or privately owned or maintained;

(5) In, or within five hundred (500) feet of, any safety rest or recreation area, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(6) Within five hundred (500) feet of any sanitary or other facility for

the accommodation of the motorist, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(7) In, or within five hundred (500) feet of, any strip of land, an interest in which has been acquired by this state for the restoration, preservation, or enhancement of scenic beauty, and which is publicly controlled and maintained, pursuant to section 319 of title 23 of the United States Code;

(8) Specifically zoned noncommercial or nonindustrial under the authority of presently existing zoning statutes or zoning statutes hereafter enacted in this state.

The foregoing provisions of this subsection shall be so interpreted as to protect the uses, activities and features above specified, whether now in existence or hereafter established. In addition, any area zoned commercial, as hereinbefore provided, which is otherwise inappropriate for the commercial uses specified in subsection (c) shall be promptly rezoned in such a manner as to prohibit such uses therein, as provided in subsection (e), but subject to the protection of agricultural activities and private residential uses as therein specified.

(c) Permitted uses. The following uses and activities, subject to the regulations specified in subsection (d) concerning reasonable zoning regulations by the several boards of county commissioners, shall be permitted in areas zoned as commercial under this section.

(1) Agricultural, grazing, ranching, horticulture uses and activities, and the growing of timber, and all other uses and activities reasonably or customarily related thereto, or generally permitted in areas zoned for agriculture, grazing, ranching, or the like (herein collectively referred to as "agricultural activities");

(2) Buildings used for private residences;

(3) Motels and hotels;

(4) Restaurants and similar establishments serving prepared foods on-premise;

(5) Grocery stores;

(6) Gasoline stations;

(7) Sporting goods stores;

(8) Golf clubs and courses;

(9) Agricultural produce stands;

(10) Resorts, and recreational facilities reasonably related to the topography and nature of the land;

(11) Outdoor advertising, whether on-premise or off-premise and regardless of its content; and

(12) Such other uses and activities as the several boards of county commissioners may in their discretion deem suitable therein.

(d) Zoning and building regulations. Outdoor advertising shall be subject to the regulations specified in section 6 [32-4706] concerning size, spacing and lighting and to none other. All other uses and activities specified in subsection (c), except the agricultural activities and private residential uses aforesaid, shall be subject to such reasonable regulations

as may be enacted by the several boards of county commissioners, or under their authority, in the manner provided by presently existing or hereafter enacted planning and zoning statutes.

(e) Rezoning by counties. The several boards of county commissioners, or those acting under their authority, in accordance with presently existing or hereafter enacted planning or zoning statutes, are hereby authorized to rezone any commercial zone or part thereof, hereby created, in accordance with applicable zoning principles, in either a more or less restrictive manner; provided, that no restrictive rezoning shall prohibit the agricultural activities and private residential uses aforesaid. In so acting, such boards, or those acting under their authority, shall utilize their presently existing or hereafter authorized planning and zoning procedures. Nothing in this section shall affect any authority of any political subdivision to zone lands not zoned or rezoned by the legislature hereunder.

(f) Zoning principles. The zoning principles which are relevant to land-use planning and zoning outside of municipalities and which govern in this state are as follows:

(1) Lands, whether vacant or used or not, shall be so zoned as to permit the uses thereof which are appropriate thereto, and to prohibit the uses thereof which are inappropriate thereto.

(2) The present and future needs of the economy of the state for a particular kind of activity and the convenience which it would afford to the citizenry can in themselves render some lands appropriate therefor which might otherwise be inappropriate therefor.

(3) Zoning shall not, contrary to the desires of the affected parties, be unreasonably discriminatory as between the owners of substantially similar parcels of land to similar uses.

(4) Agricultural, horticultural, grazing, and ranching uses and purposes, and the growing of timber, shall always be deemed appropriate upon the lands herein zoned and all other activities specified in subsection (c) shall also be deemed appropriate for the lands herein zoned and lands having a population of low density except where such lands are of uncommon natural beauty, and except as provided in subsection (b).

In zoning as aforesaid, the legislature has complied with and duly considered its said zoning principles in light of the developing economy, the desirability of lessening commercial congestion within municipalities, the desirable trend towards decentralization of commercial activities, the increasing needs of the motoring public, the economic necessity confronting businesses both inside and outside of municipalities of advertising to the motoring public, and the public interest in protecting areas of uncommon natural beauty.

(g) Effect on taxation. The zoning and rezoning effected and authorized by this section shall not in itself affect any taxes levied against real property or any assessment or assessment classification, but actual increases in value of any parcel of land by reason of the construction or erection of a building or structure thereon shall be taken into account in thereafter assessing the value thereof and in levying any ad valorem tax thereon.

(h) Future existing uses. The commercial zoning affected by this section shall be without prejudice to the right of the legislature hereafter to rezone and further rezone. The legislature further declares its intent to periodically review and, when deemed necessary, to modify or otherwise alter the zoning established by this section based on considerations of economic, physical, social, governmental and other conditions relating to the development of the state. Any sign, display or device used for outdoor advertising in any such commercial zone, which shall become illegal by reason of zoning by a board of county commissioners under subsection (e), or rezoning by the legislature, as herein provided, shall be required to be removed or brought into compliance as provided in section 8 [32-4708].

History: En. Sec. 4, Ch. 287, L. 1967.

32-4705. Unzoned areas. Unzoned commercial and industrial areas are defined for the purposes of this act as follows:

(a) Definition. An "unzoned commercial or industrial area," consistent with and subject to the principles and standards set forth in subsection (f) of section 4 [32-4704], means any of the following unzoned areas adjacent to an interstate or primary highway:

(1) All land on the same side of the highway as, and within one thousand (1,000) feet of, any commercial or industrial activity other than outdoor advertising, measured from the boundaries of the land used or occupied by such activity, including its parking, storage and service areas, its driveways, and its established front, rear and side yards constituting an integral part of such activity, except land within three hundred (300) feet of a building used primarily as a residence without the consent of the owner thereof;

(2) All land on the other side of the highway which is directly opposite from, and of the same dimensions as, any area defined under the preceding paragraph, to the extent that such land is appropriate for outdoor advertising;

(3) All land within two hundred (200) feet of the nearest edge of the right of way of the highway, measured perpendicularly to such edge, to the extent that such land is traversed by a railroad right of way and is appropriate for outdoor advertising;

(4) All pockets of land lying between any commercial or industrial areas (whether so zoned or whether unzoned as defined in this subsection) which are not more than one thousand (1,000) feet apart, to the extent that such land is appropriate for outdoor advertising; and

(5) In addition, pursuant to the exercise of an informed discretion, all other unzoned lands appropriate for outdoor advertising which are determined to be unzoned commercial or industrial areas by any board of county commissioners.

(b) Determinations and redeterminations. The several boards of county commissioners shall determine the additional unzoned commercial or industrial areas provided for by paragraph (5) of subsection (a), and shall also redetermine unzoned commercial and industrial areas defined under paragraphs (2), (3), and (4) thereof to be noncommercial and non-industrial unzoned areas to the extent that same are not appropriate for

outdoor advertising. In so acting such boards shall utilize the procedures authorized in subsection (e) of section 4 [32-4704], and shall apply the zoning principles set forth in subsection (f) of section 4 [32-4704].

History: En. Sec. 5, Ch. 287, L. 1967.

32-4706. Regulations—customary usages. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, and after January 1, 1968, signs subject to this act, but permitted under subsections (d) and (e) of section 3 [32-4703], shall comply with the regulations of this section governing the size, lighting and spacing thereof, which regulations are consistent with customary usages of this state.

(a) Regulations as to size. (1) The maximum area of a sign face shall be six hundred fifty (650) square feet, including border and trim, but not supports.

(2) In the case of double-faced, back-to-back and v-type signs, said size limitation shall be six hundred fifty (650) square feet, applicable to each separate face.

(b) Regulations as to lighting. (1) No revolving or rotating beam of light simulating an official emergency device shall be permitted. Signs with flashing red, green or amber incandescent lights shall not be permitted, except in illuminated signs giving such public service information as time, date, temperature or direction.

(2) External lighting, such as floodlights, slimline and gooseneck reflectors, shall be permitted, provided that it is shielded so as to prevent the direction of rays of light to any part of the main-traveled way.

(3) No lighting shall interfere with the effectiveness of any official traffic control device or official warning sign.

(c) Regulations as to spacing. (1) Within municipalities, signs shall be erected and maintained in conformity with any applicable building codes and ordinances relating to spacing.

(2) Outside of municipalities, no sign shall be erected adjacent to a limited access highway within five hundred (500) feet, nor adjacent to a nonlimited access highway within five hundred (500) feet, of an existing off-premise sign unless separated therefrom by a building, structure, highway or roadway.

(3) Neither inside nor outside of municipalities shall any sign be erected or maintained in such a location as to prevent the driver of a vehicle from having an effective view of any official traffic control device applicable to him or of approaching, merging or intersecting traffic within five hundred (500) feet of such sign.

(4) For the purposes of the spacing regulations aforesaid, double-faced, back-to-back, and v-type signs shall be considered as a single sign.

(d) Legislative finding. The legislature has conducted hearings and received evidence as to customary usage in outdoor advertising in this state, and, based thereon, and upon its own knowledge thereof, does hereby find and determine that the regulations in this paragraph set forth as to

size, lighting and spacing are consistent with customary usage in this state.

History: En. Sec. 6, Ch. 287, L. 1967.

32-4707. Permits. After January 1, 1968, no private off-premise sign shall be maintained without a permit. Applications for permit shall be made to the state highway commission or, within municipalities, to the municipal authority designated by its legislative body on forms furnished by said commission, and calling for reasonable information, including a statement that the owner or occupant of the land in question has consented to the erection or maintenance of the sign thereon, and shall be accompanied by a fee in accordance with the following schedule:

(a) Fifty cents (\$.50) if the advertising area does not exceed fifty (50) square feet;

(b) One dollar (\$1) if such area exceeds fifty (50) but does not exceed three hundred (300) square feet;

(c) Two dollars (\$2) if such area exceeds three hundred (300) square feet.

Permits shall be for the calendar year, shall be assigned a permanent number, and shall be renewed annually upon payment of said fee for the new year without the filing of a new application. Fees shall not be prorated for fractions of the year. Two (2) permits shall be required for a double-faced, back-to-back, or v-type sign. Advertising copy may be changed at any time without the payment of an additional fee.

The commission or municipal authority shall issue a permit for the sign covered by application duly made as aforesaid, unless it is in violation of this act and, upon the initial issuance of a permit, shall also issue a permanent identification tag not larger than six (6) square inches, carrying the permit number, which tag the permittee shall affix to the sign. Notwithstanding the foregoing, and despite any such violation, a permit and identification tag shall be issued for any sign in existence on the effective date of this act and the permit shall thereafter be renewed for the periods of time prescribed in section 8 [32-4708].

A permit may be revoked after hearing upon thirty (30) days' notice if the state highway commission finds that any statement made in the application therefor was false or misleading or that the sign covered thereby is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this act, provided that such false or misleading information has not been corrected and that the sign has not been brought into compliance with this act within thirty (30) days after written notification thereof.

History: En. Sec. 7, Ch. 287, L. 1967.

32-4708. Removal of nonconforming signs. Any sign lawfully in existence along the interstate system or the primary system on October 22, 1965, and which is not now in conformity with the provisions contained herein shall not be required to be removed until July 1, 1970. Any other sign lawfully erected which does not on January 1, 1968, or at any time

thereafter, conform to this act, shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

History: En. Sec. 8, Ch. 287, L. 1967.

32-4709. Compensation for removal of signs. The state highway commission is directed to acquire by purchase, gift, or condemnation and shall pay just compensation when and in so far as signs are required to be removed by this act, as follows:

(a) Any such removal, by whomever effected, shall be deemed a taking and appropriation by this state of the following:

(1) From the owner of such sign: all right, title, and interest in such sign, and in his leasehold, license or other interest, including purely contractual interests, in or related to the land; and

(2) From the owner of the real property on which the sign is located: the right to erect and maintain the sign thereon, whether or not a contractual arrangement for the erection and maintenance of such sign exists.

(b) In cases of purchase, compensation shall be paid in the amount and at the time mutually agreed upon. In cases of condemnation, compensation shall be paid in the amount computed as aforesaid, and the person or persons entitled thereto shall have the same rights in respect to the time of payment, procedures, and resort to the courts of this state as those of a record owner whose fee in lands has been condemned and taken for highway right of way.

(c) In addition, the state highway commission may voluntarily purchase from any sign owner or landowner the rights, titles, interests and elements of value aforesaid prior to the time when the sign's removal is required by this act, or whether or not its removal is required by this act, upon such terms as to price, removal, date of removal, and otherwise, as are mutually agreeable to it and to the owners of the sign and land.

(d) Notwithstanding anything to the contrary contained herein no compensation shall be paid with respect to any sign erected after the passage and approval of this act, which on January 1, 1968, shall not be in conformity with the provisions contained herein.

History: En. Sec. 9, Ch. 287, L. 1967.

32-4710. Unlawful advertising. Any advertising sign which violates the provisions of this act is hereby declared to be illegal. Subject to sections 8 and 9 [32-4708 and 32-4709], the state highway commission shall give thirty (30) days' notice, by certified mail, to the owner thereof to remove same if it is a prohibited sign or cause it to conform to regulations if it is an authorized sign. If the owner fails to act within thirty (30) days as required in the notice, the state highway commission shall proceed to cause the removal of the sign under section 11 [32-4711] at the owner's expense.

History: En. Sec. 10, Ch. 287, L. 1967.

32-4711. Enforcement. The state highway commission shall enforce the provisions of this act through the remedy of injunction or other appropriate legal proceedings, and shall not act except through such proceed-

ings. Neither the state highway commission nor any other agency nor political subdivision of this state shall, by plantings or otherwise, obstruct the view, or in any other way interfere with the effectiveness of any sign legally in place under the provisions of this act.

History: En. Sec. 11, Ch. 287, L. 1967.

32-4712. Agreements with the United States. The state highway commission is hereby authorized and directed in behalf of this state to seek agreements with the secretary of commerce or the secretary of transportation as to the matters specified for agreement in subsection (d) of section 131 of title 23, United States Code. Said commission's authority so to act is hereby limited, consistent with constitutional principles, to seeking and if possible making agreements embodying the provisions and only the provisions of sections 5 and 6 [32-4705 and 32-4706], on the basis that they are in conformity with said section 131.

If such agreement or agreements cannot be achieved, the attorney general of this state shall promptly initiate proceedings under the provisions of said section 131 with respect to hearings, stay-of-penalties, and judicial review in order to resolve the disagreement by judicial determination. He shall also initiate such proceedings in the event of a determination to withhold any funds from this state for any alleged failure of this state to comply with any provision of said section 131, in order to obtain a judicial determination of whether this act provides effective control of outdoor advertising in conformity with said section 131.

History: En. Sec. 12, Ch. 287, L. 1967.

32-4713. Guarantee against loss of funds. It is the overriding intent of this act, while asserting the rightful independence of this state in regard to the regulation of land usage within its borders, to ensure in all events against the withholding of any federal-aid highway funds from this state under the Federal Highway Beautification Act of 1965. Accordingly, in the event that a United States district court for this state or, in case of further appeal or review, the United States court of appeals or supreme court should hold any part of this act, or any action taken hereunder, to be in noncompliance with said federal act, the state highway commission shall, when all possibilities of review have been exhausted, promulgate such regulations as are minimally necessary to avoid the loss of any such funds, which regulations shall govern to the extent of any inconsistency between them and this act and shall be retroactively effective from January 1, 1968, if necessary to achieve the objective of this section, and until modified or superseded by further action by the legislature. Such regulations may suspend or supersede any provision of this act or any action taken hereunder, including any zoning action, but only to the extent necessary to achieve the objective of this section. In so acting the state highway commission shall be guided by and conform to the judgment and instructions of the highest court to rule on this act's compliance or not, and, in the case of the two (2) matters specified for agreement with the secretary of commerce or transportation in subsection (d) of section 131 of said title 23, by the position of such secretary to the extent that it may not have been set aside, modified or disapproved by such court.

History: En. Sec. 13, Ch. 287, L. 1967. 1965, referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Compiler's Note

The Highway Beautification Act of

32-4714. Congressional action or nonaction. In the event that the congress should fail prior to January 1, 1970, to make an appropriation for compensation purposes in such an amount that this state's share thereof will be sufficient to pay seventy-five per cent (75%) of the compensation provided for in section 9 [32-4709], to the extent payable under the Highway Beautification Act of 1965, and as estimated by the state highway commission, this act shall on January 1, 1970, become automatically null and void. In any event, if at any time in the future congress should amend section 131 of title 23, United States Code, or whatever law might then provide for federally required control of signs by the several states, in such manner as to no longer require control of signs in areas adjacent to the primary system, or any part or parts thereof, this act shall automatically be deemed amended as of the effective date of such congressional action in such manner that it will thenceforth in no way whatsoever control, restrict, regulate, or in any way affect the erection or maintenance of signs in areas adjacent to the primary system, or to such part or parts thereof; provided, however, that nothing herein shall diminish the rights of any sign owner to compensation under section 9 [32-4709] for signs which may theretofore have been removed from areas adjacent to the primary system.

History: En. Sec. 14, Ch. 287, L. 1967.

Compiler's Note

The Highway Beautification Act referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Separability Clause

Section 16 of Ch. 287, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable

from the invalid part remain in effect. If a part of the act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 15 of Ch. 287, Laws 1967 read "All statutes and regulations promulgated governing outdoor advertising adjacent to the federal interstate and primary highway systems are hereby repealed."

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-124.

CHAPTER 1—HOMESTEADS

Section 33-124. Homesteads—quantity and value of land.

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of seven thousand five hundred dollars (\$7,500.00), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965. Cal. Civ. C. Sec. 1260.

Amendment

The 1965 amendment increased the

maximum value of the homestead specified in paragraph 3 from \$2,500 to \$7,500.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 34—HOTELS

Chapter 3. Licensing and regulation of transient lodging establishments, 34-301 to 34-310.

CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sani-

tation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

CHAPTER 3—LICENSING AND REGULATION OF TRANSIENT LODGING ESTABLISHMENTS

- Section 34-301. Control and regulation of establishments required by public interest.
34-302. Definitions.
34-303. License required.
34-304. Fee—term of license.
34-305. Cancellation or denial of license—procedure.
34-306. Rules and regulations—co-operative agreements.
34-307. Inspections.
34-308. Authority of board to issue subpoenas.
34-309. Penalty.
34-310. License fee—supersedes other fees.

34-301. Control and regulation of establishments required by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing transient lodging space and/or accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing transient lodging space and/or accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967.

Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sanitary standards for such establishments; providing for public hearing on rules

and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212,

34-213, 34-214, 34-215, 34-216, 34-217, Re- or supplemented, and establishing ef-
vised Codes of Montana, 1947, as amended ffective date.

34-302. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Person" includes any individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating or owning or offering the services of a hotel, motel, or tourist home.

(b) "Board" as used in this act shall mean the state board of health of the state of Montana.

(c) "Executive officer" shall mean the executive officer of the state department of health.

(d) "Department" means the state department of health.

(e) "Hotel or motel" shall mean and include any building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(f) "Tourist home" means any establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when such accommodations are offered for hire or rent for the use of the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967.

34-303. License required. Each year, every person engaged in the business of conducting or operating a hotel, motel, or tourist home, as defined in section 2 [34-302], shall procure a license issued by the department. A separate license shall be required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for such license shall be made in writing to the department on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

History: En. Sec. 3, Ch. 18, L. 1967.

34-304. Fee—term of license. (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of five dollars (\$5). Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transfer-

able nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967.

34-305. Cancellation or denial of license—procedure. (a) The executive officer of the department may cancel any license if he finds, after proper investigation by a representative of the department, that the licensee has violated provisions of this act or any regulation effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by said executive officer shall be a bar to prosecution for violation.

(b) No license shall be denied or canceled by the executive officer of the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, licensee must make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(c) When a multiple type establishment is licensed by the department, the denial or cancellation of said license may affect the entire establishment or only a portion of same as determined by the executive officer (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(d) Upon cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the executive officer for destruction or deletion of types of establishment as the executive officer may direct in his notice of cancellation.

(e) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(f) Whenever the department shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 18, L. 1967.

34-306. Rules and regulations—co-operative agreements. (a) The board is hereby empowered to prescribe and to enforce rules and regulations and to prescribe such procedures as are necessary to preserve the public health and safety. These rules and regulations shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and

controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision; provided further that no rule or regulation shall be effective until a public hearing has been held for review of said rules and regulations. Said public hearing is to be announced to all Montana licensed operators thirty (30) days in advance in writing and accompanied by copy of proposed rules and regulations.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967.

34-307. Inspections. (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the board may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967.

34-308. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 18, L. 1967.

34-309. Penalty. Any person violating any provision of this act or regulation made hereby shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 18, L. 1967.

34-310. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 18, L. 1967.

Separability Clause

Section 11 of Ch. 18, Laws 1967 read

“If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction,

such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 18, Laws 1967 read "All acts or parts of acts in conflict here-

with are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 18, Laws 1967 read "This act shall be effective January 1, 1968."

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

36-128. (5809) May sue and be sued.

History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district

courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by

providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay

of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so

appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963.

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of _____

Upon the petition of _____ Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
And concerning _____ Respondents.	and }	

To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers

in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) **Stay of Divorce Proceedings—Where Conciliation Petition Filed First.** Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) **Jurisdiction Where No Minors Involved.** Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, Article 8, Section 1, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. Initiative and referendum, 37-104.1.

CHAPTER 1—INITIATIVE AND REFERENDUM

Section 37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot.

37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. The statement as prepared by the attorney general, shall be in addition to the legislative title of the measure. On the printing of the ballot, the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Mon-

tana and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The Montana state hospital—management, 38-107 to 38-110, 38-119, 38-120.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
5. Convalescent leave of patients, 38-502, 38-504, 38-505.
7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
8. Montana state training school and hospital, Repealed—Section 101, Chapter 199, Laws of 1965.
9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

- Section 38-107. Department may send patient to friends.
38-108(1). May contract with some other institution.
38-108(2). May contract with some other institution.
38-109. Discharge of patients.
38-110. Maintenance of indigent persons on discharge.
38-119. Insane person not indigent must be paid for.
38-120. Receipt of nonresident insane pending return to home state.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108(1). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the compiler has set out the language of both amendatory acts. The above is the

language of Ch. 213, Laws 1963; the language of Ch. 266 appears below as section 38-108(2).

Amendment

The 1963 amendment substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

38-108(2). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 22, Ch. 266, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the com-

piler has set out the language of both amendatory acts. The above is the language of Ch. 266, Laws 1963; the language of Ch. 213 appears as section 38-108(1).

Amendment

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

Opinion Required

The written opinion of the hospital medical board and not that of a ward doctor is essential for the release of a patient. *Petition of Smith*, 145 M 567, 403 P 2d 604.

References

Petition of Kolocotronis, 145 M 564 402 P 2d 977.

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such patient is found to be in financial need the county board of public welfare

shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "in addi-

tion to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

Amendment

The 1963 amendment deleted a final

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

**CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED
—COMMITMENT**

Section 38-207. Forms of certificates.

38-210. Moneys of insane person—disposal of.

38-201. (1431) Examination before magistrate—affidavit, etc.

Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that district judge and court attendants went to

hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's

rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

References

State v. Green, 143 M 234, 388 P 2d 362.

38-207. (1437) Forms of certificates. The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "board of the commissioners for the insane."

38-210. (1440) Moneys of insane person—disposal of. When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars (\$100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars (\$100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars (\$50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.

Repeal

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.

Repeal

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-411, 38-412. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.

38-504. Termination of convalescent leave.

38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital.

The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public institutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws 1963; Section 101, Chapter 199, Laws 1965)

38-701 to 38-711. (1445 to 1455) Repealed.

Repeal

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws 1963; Section 82, Chapter 266, Laws 1963 and Section 101, Chapter 199, Laws 1965)

38-801. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.

Repeal

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.

Repeal

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.

Repeal

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.**Repeal**

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.**Repeal**

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.**Repeal**

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812. Repealed.**Repeal**

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.**Repeal**

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.**Repeal**

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.**Repeal**

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. Repealed.**Repeal**

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. Repealed.**Repeal**

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. Repealed.**Repeal**

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-135, 39-136.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

Section 39-135. Validation of unacknowledged deeds executed before 1965.
39-136. Validation of unacknowledged deeds executed before 1967.

39-135. Validation of unacknowledged deeds executed before 1965.
All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965.

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-

clusive evidence of title against the grantors, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

39-136. Validation of unacknowledged deeds executed before 1967.
All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 183, L. 1967.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which

are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 27. The commissioner of insurance, 40-2716, 40-2717.
28. Authorization of insurers and general requirements, 40-2820 to 40-2822.
30. Assets and liabilities, 40-3011.
33. Agents, solicitors and adjusters, 40-3332.
35. Trade practices and frauds, 40-3506.
38. Life insurance and annuities, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906.
41. Group and blanket disability insurance, 40-4108, 40-4109.
42. Credit life and disability insurance, 40-4211.
44. Casualty insurance contracts, 40-4402, 40-4403.
47. Organization and corporate procedures of stock and mutual insurers, 40-4751 to 40-4758.
48. Farm mutual insurers, 40-4804.
54. Extended health insurance for older persons, 40-5401 to 40-5408.
55. Insurance Holding Act, 40-5501 to 40-5508.

CHAPTER 17—SURETY COMPANIES

40-1727. (6236) Repealed.

Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county, city and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

Section 40-2716. Examination reports.
40-2717. Examination expense.

40-2716. Examination reports. (1) and (2). * * * [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars (\$1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify

and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959; **Amendments**
amd. Sec. 1, Ch. 28, L. 1967.

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959; **Amendment**
amd. Sec. 72, Ch. 147, L. 1963.

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 40-2820. Annual statement.

40-2821. Tax.

40-2822. Resident agent required—countersignature—records—exceptions.

40-2820. Annual statement. (1) to (3). * * * [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars (\$1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

History: En. Sec. 65, Ch. 286, L. 1959; **Amendments**
amd. Sec. 1, Ch. 27, L. 1967.

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a

tax upon such net premiums, the tax to be computed at the rate of two per cent (2%) of such premiums; provided that for each of the calendar years 1967 and 1968 the tax shall be computed at the rate of two and one-quarter per cent (2¼%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967.

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the

proviso to the first paragraph of subsection (2).

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

40-3011. Standard valuation law—life insurance. (1) and (2). * * * [Same as parent volume.]

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent ($3\frac{1}{2}\%$) interest, and the following tables:

(i) * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vii) * * * [Same as parent volume.]

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965.

Amendment

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through

Compiler's Note

The compiler has inserted the bracketed words "lower than the rate of interest" in paragraph (3) (d). These words did not appear in the 1965 amendatory act, apparently through clerical error.

clerical error, deleted from paragraph (3) the act should be in effect from and after its passage and approval. Approved February 22, 1965.

Effective Date

Section 2 of Ch. 41, Laws 1965 provided

CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

Section 40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars (\$500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967.

Title of Act

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

CHAPTER 35—TRADE PRACTICES AND FRAUDS

Section 40-3506. False financial statements.

40-3506. False financial statements. (1). * * * [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars (\$1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; amd. Sec. 1, Ch. 29, L. 1967.

person who aids or abets * * * or both such fine and imprisonment" at the end of the section.

Amendments

The 1967 amendment added "and any

CHAPTER 37—THE INSURANCE CONTRACT

40-3725. Construction of policies.

Construction against Insurer

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. In

insurance Co. of North America v. Butte Aero Sales & Service, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person

and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Crop Insurance

Crop-hail insurance policy, which required information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was

based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. *Billmayer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop, and not the value of the crop. *Billmayer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3831. Standard nonforfeiture law—life insurance.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3).
* * * [Same as parent volume.]

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall

for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a). * * * [Same as parent volume.]

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of

time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

- (a) In the event of death or dismemberment by accident or accidental means,
- (b) In the event of total and permanent disability,
- (c) As reversionary annuity or deferred reversionary annuity benefits,
- (d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,
- (e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and
- (f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and non-forfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965.

Amendment

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9),

and (10); and made minor changes in punctuation in subsections (7-a) and (8).

Effective Date

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.
40-3906. Debtor groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Title of Act

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

Amendment

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

Repealing Clause

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4108. Policies to provide for freedom of choice of practitioners.

40-4109. Scope of professional practice not enlarged—hospitals.

40-4108. Policies to provide for freedom of choice of practitioners. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or chiropodist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

History: En. Sec. 1, Ch. 172, L. 1967.

Title of Act

An act requiring disability insurance and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly

licensed physician, osteopath, chiropractor, optometrist or chiropodist for treatment of illness or injury; providing a like freedom of choice in the selection of pharmacists; providing an effective date; and containing a repealing clause.

40-4109. Scope of professional practice not enlarged—hospitals. Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: En. Sec. 2, Ch. 172, L. 1967.

Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

Section 40-4211. Premiums and refunds.

40-4211. Premiums and refunds. (1) to (3). * * * [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967.

Amendments

The 1967 amendment added subsection (4) to this section.

CHAPTER 43—PROPERTY INSURANCE CONTRACTS

40-4301. Measure of the indemnity.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4302. Valued policy law.**References**

Billmayer v. Farmers Union Property
& Casualty Co., 146 M 38, 404 P 2d 322.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where

sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-422, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named

insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967.

the option of the insured; providing for an effective date.

Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at

Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

- Section 40-4751. Equity securities of domestic stock insurance company—statement of ownership.
- 40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.
- 40-4753. Short sales of equity securities prohibited—time for delivery after sale.
- 40-4754. Exemptions—securities held in an investment account—primary or secondary market.
- 40-4755. Exemptions—arbitrage transactions.
- 40-4756. "Equity security" defined.
- 40-4757. Exemptions—registered securities—holding by less than one hundred persons.
- 40-4758. Rules and regulations of commissioner—classifications—effect.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965.

domestic stock insurance company equity securities.

Title of Act

An act relating to insider trading of

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity

security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. Short sales of equity securities prohibited—time for delivery after sale. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. Exemptions—securities held in an investment account—primary or secondary market. The provisions of section 2 [40-4752] of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. Exemptions—arbitrage transactions. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. "Equity security" defined. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner—classifications—effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.

40-4804. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of

the insurer or fifteen thousand dollars (\$15,000), whichever is the larger amount.

(2). * * * [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967.

Amendments

The 1967 amendment substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars" in subsection (1).

CHAPTER 51—REHABILITATION AND LIQUIDATION

40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Insurers Liquidation Act: Alaska, Arkansas, Florida, and West Virginia.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

- Section 40-5401. Purpose of act.
 40-5402. Definition of terms.
 40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.
 40-5404. Agents authorized to write coverage.
 40-5405. Corporate powers of association—examination of books.
 40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.
 40-5407. Filing with commissioner by association—deceptive practices prohibited.
 40-5408. Exemption of association from other laws.

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process

against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide in-

formation as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date 1966 January 1

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

CHAPTER 55—INSURANCE HOLDING ACT

Section 40-5501. Short title.

40-5502. General definitions.

40-5503. Restrictions on transfers of stock.

40-5504. Exemptions from prohibitions on stock transfers.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.

40-5507. Violations of act—penalty.

40-5508. Filing of false information—penalty.

40-5501. Short title. This act may be cited as the "Montana Insurance Holding Act."

History: En. Sec. 1, Ch. 269, L. 1967.

Title of Act

An act to provide for control and regulation of the affairs of domestic and

foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insurance holding companies; prescribe rules and regulations regarding acquisition and

disposal of stock of insurance companies by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by

the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

40-5502. General definitions. Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substantial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

History: En. Sec. 2, Ch. 269, L. 1967.

40-5503. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

History: En. Sec. 3, Ch. 269, L. 1967.

40-5504. Exemptions from prohibitions on stock transfers. The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or otherwise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports. Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each

year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition. Any company or insurance holding company desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967.

40-5507. Violations of act—penalty. Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars (\$1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967.

40-5508. Filing of false information—penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

History: En. Sec. 8, Ch. 269, L. 1967.

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VOLUME 3

Part 2

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
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CHAPTER 1—OBLIGATIONS OF EMPLOYERS

1-103. (7758) When not.

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that

the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

- Section 41-1201. Apprenticeship council.
- 41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education is in charge of trade and industrial education and the state official

who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963.

Amendment

The 1963 amendment completely rewrote subsection (a), for previous version of which see parent volume; and added subsection (e).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

Amendment

The 1963 amendment deleted a final

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

Section 41-1302. Penalty for failure to pay wages at times specified in law.

41-1303. Employees separated from employment before payday—wages, when payable.

41-1314.1. Enforcement.

41-1314.2. Authority to take wage assignments.

41-1302. (3085) Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the collection of unpaid wages and for the penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and

become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

41-1303. (3086) Employees separated from employment before pay-day—wages, when payable. Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

41-1314.1. Enforcement. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967.

Title of Act

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the

commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

41-1314.2. Authority to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

History: En. Sec. 4, Ch. 40, L. 1967.

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

41-1603. Commissioner of labor and industry—term—salary—oath. The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967.

Amendments

The 1963 amendment substituted a provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thou-

sand dollars (\$1,000)" from the end of the section.

The 1967 amendment substituted the second, third and fourth sentences for a provision in the former section fixing the maximum salary at \$7,500; and made minor changes in punctuation and phraseology.

CHAPTER 19—WINTER WORK PROGRAMS

- Section 41-1901. Definition of terms.
 41-1902. Municipal winter work committees authorized—composition and appointment of members.
 41-1903. Terms of work committee members—no compensation.
 41-1904. Meetings and officers of work committee.
 41-1905. Promotion of winter work program.
 41-1906. State employment service to co-operate.
 41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter, the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

Section 41-2001.	Short title.
41-2002.	Bond required of lessee.
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41-2009.	Certification of lessee on filing of bond.
41-2010.	New or additional bond—sureties.
41-2011.	Disposition of fees.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, where the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 5 [41-2005] of this act.

History: En. Sec. 2, Ch. 155, L. 1965.

41-2003. Purpose of act. The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns employed under the circumstances of ownership of the equipment, ap-

pliances and other accessories as outlined in section 2 [41-2002] of this act and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

History: En. Sec. 3, Ch. 155, L. 1965.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning: (1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessor" means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease.

(4) "Lessee" means one to whom a lease is made.

(5) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(6) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1 %) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(7) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4 %) alcohol by weight.

(8) "Employee" means a person who works for wages or salary in the service of an employer.

(9) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(10) "Equipment" means the articles, furnishings, supplies and apparatus used in a business.

(11) "Appliances" means all devices and apparatus used in the conduct of business.

(12) "Accessories" means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business.

History: En. Sec. 4, Ch. 155, L. 1965.

41-2005. Bond to be filed by lessee—amount—ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern, or who leases equipment, appliances or accessories for such purpose, is hereby required to file a bond equal to at least double the amount of the semi-monthly payroll with the commissioner of labor and industry and an

affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein.

History: En. Sec. 5, Ch. 155, L. 1965.

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 5 [41-2005] of this act shall be filed with the commissioner of labor and industry by July 1 and February 1 of each year. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee therein as provided in section 9 [41-2009] of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 2 [41-2002] of this act the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

History: En. Sec. 6, Ch. 155, L. 1965.

41-2007. Liability of lessor and lessee for unpaid wages. Upon non-payment of wages, if no bond has been filed as provided for in this act, the employees of the lessee may recover from either the lessor or lessee who shall be jointly and severally liable in accordance with the provisions of sections 41-1302 and 41-1306, Revised Codes of Montana, 1947.

History: En. Sec. 7, Ch. 155, L. 1965.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

41-2009. Certification of lessee on filing of bond. Upon filing a bond as required by section 5 [41-2005] of this act and after payment of two (\$2) dollars, as application fee, the commissioner of labor and industry shall issue to the lessee applying a certificate stating that the lessee is duly bonded and entitled to conduct a restaurant, bar or tavern business in the state of Montana.

History: En. Sec. 9, Ch. 155, L. 1965.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems

it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965.

41-2011. Disposition of fees. All fees and moneys collected pursuant to section 9 [41-2009] of this act shall be credited to a special account to be known as the restaurant, bar and tavern employees wage protection fund, and shall be used by the commissioner of labor and industry to carry out the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1965.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 21—LABOR SAFETY STUDY COMMISSION

Section 41-2101. Intent and purpose of act.

41-2102. Appointment of commission—scope of work.

41-2103. Composition of commission.

41-2104. Distribution of proposed changes to industry and legislature.

41-2105. Legislative adoption required.

41-2106. Employment of secretary and research services by commission.

41-2107. Reimbursement of commission members.

41-2108. Adoption of rules—records.

41-2101. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the laws of Montana for the purpose of governing the safety provisions in places of employment and to regulate the conduct of the employer-employee relationship in matters pertaining to safety in order to insure, as much as possible, safe places of employment and to protect and preserve the physical health and well-being of employees and to endeavor to cut down employee accidents and to revise and modernize the safety laws in order to promote safety in employment and speedy, effective and economical ways of administering such laws.

History: En. Sec. 1, Ch. 323, L. 1967.

Title of Act

An act authorizing and empowering the commission of labor of the state of Montana to recommend changes in the laws of Montana relating to safety codes, safety positions, and general safety laws; creating a commission to prepare suggested changes in safety laws and propose new laws and propose new recommendations as to the position of safety; prescribing the membership and the powers and duties of

said commission; providing for the employment of a secretary-stenographer of the commission and employment of research facilities, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

41-2102. Appointment of commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the governor of the state of Montana shall appoint a commission of eight

(8) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and prepare suggested changes in the safety codes of Montana.

History: En. Sec. 2, Ch. 323, L. 1967.

41-2103. Composition of commission. The commission shall be composed of the commissioner of labor as its chairman, two representatives to be selected from industry, two representatives to be selected from labor, the chairman of the industrial accident board, or his designated representative, a member of the medical profession, and a member of the bar association of Montana.

History: En. Sec. 3, Ch. 323, L. 1967.

41-2104. Distribution of proposed changes to industry and legislature. The commission so appointed shall prepare its suggested changes as well as to distribute copies to industry and labor for their consideration and suggestions as they may submit to the commission. Such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

History: En. Sec. 4, Ch. 323, L. 1967.

41-2105. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 5, Ch. 323, L. 1967.

41-2106. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 6, Ch. 323, L. 1967.

41-2107. Reimbursement of commission members. Members of said commission shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 7, Ch. 323, L. 1967.

41-2108. Adoption of rules—records. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 8, Ch. 323, L. 1967.

Separability Clause

Section 9 of Ch. 323, Laws 1967 read
"If any sentence, section, clause, or

phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 10 of Ch. 323, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 323, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 1—HIRING—IN GENERAL

42-105. (7734) Must repair injuries, etc.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Lessor to make dwelling house fit for its purpose.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. Enott v. Hinkle, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action

could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

Tenancy from Year to Year

Where property was hired for meat

business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter 1. Senatorial representative and congressional districts, 43-106.1, 43-106.2, 43-107.
2. The legislative assembly—its composition, organization, officers and employees, 43-215 to 43-217.
3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310.
8. Lobbying, 43-803.
9. Legislative proceedings—dissemination, 43-902.
10. Fiscal notes in legislative bills, 43-1001 to 43-1006.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

- Section 43-106.1. Number of senators—senatorial districts and apportionment.
- 43-106.2. Number of representatives—representative districts and apportionment.
- 43-107. Congressional districts.

43-101 to 43-106. (42 to 47) Repealed.

<p>Repeal</p> <p>These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch.</p>	<p>37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.</p>
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43-106.1. Number of senators—senatorial districts and apportionment.

The senate of the legislative assembly shall consist of fifty-five (55) members. The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District Number	Number of Senators	District Consists of County or Counties
1	1	Carter, Fallon, Wibaux, Prairie
2	1	Dawson
3	1	Richland and McCone
4	1	Roosevelt
5	2	Valley, Daniels, Sheridan
6	1	Rosebud, Treasure, Garfield, Petroleum
7	1	Custer
8	1	Big Horn, Powder River
9	6	Yellowstone
10	1	Phillips, Blaine
11	1	Fergus
12	1	Musselshell, Golden Valley, Wheatland, Sweetgrass
13	1	Carbon, Stillwater
14	1	Park
15	2	Gallatin

Senatorial District Number	Number of Senators	District Consists of County or Counties
16	1	Jefferson, Broadwater, Meagher
17	1	Chouteau, Judith Basin
18	6	Cascade
19	2	Hill, Liberty
20	2	Toole, Pondera, Teton
21	2	Lewis and Clark
22	2	Deer Lodge, Powell, Granite
23	4	Silver Bow
24	1	Beaverhead, Madison
25	1	Ravalli
26	4	Missoula
27	1	Sanders, Mineral
28	1	Lake
29	1	Glacier
30	3	Flathead
31	1	Lincoln

History: En. Sec. 1, Ch. 194, L. 1967.

Title of Act

An act apportioning the legislative assembly; providing for filling of vacancies in the legislative assembly; and amending sections 23-803, 23-910, 23-921, 23-1109,

23-1111, 23-1807, 23-1812, 23-1904, 23-2402 and 23-2403, R. C. M. 1947; and repealing sections 16-508, 16-518, 23-1108, 23-1809, 23-1810, 23-1812, 43-101, 43-102, 43-103, 43-104, 43-105, 43-106, 43-203 and 43-204, R. C. M. 1947.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Former sections 43-101 to 43-105 were unconstitutional in that they violated the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution. Herweg v. Thirty-Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

43-106.2. Number of representatives—representative districts and apportionment. The house of representatives of the legislative assembly shall consist of one hundred and four (104) members. The representative districts and the number of representatives elected from each district are as follows:

Representative District Number	Number of Representatives	District Consists of County or Counties
1	2	Carter, Fallon, Wibaux and Prairie
2	2	Dawson
3	2	Richland and McCone
4	2	Roosevelt
5A	1	Sheridan
5B	3	Valley, Daniels
6	2	Rosebud, Treasure, Garfield and Petroleum
7	2	Custer

Representative District Number	Number of Representatives	District Consists of County or Counties
8	2	Big Horn and Powder River
9	12	Yellowstone
10A	1	Phillips
10B	1	Blaine
11	2	Fergus
12A	1	Musselshell and Golden Valley
12B	1	Wheatland and Sweet Grass
13	2	Carbon and Stillwater
14	2	Park
15	4	Gallatin
16	2	Jefferson, Broadwater and Meagher
17	2	Chouteau and Judith Basin
18	11	Cascade
19	3	Hill and Liberty
20A	1	Toole
20B	1	Pondera
20C	1	Teton
21	4	Lewis and Clark
22A	1	Powell
22B	3	Deer Lodge and Granite
23	7	Silver Bow
24A	1	Beaverhead
24B	1	Madison
25	2	Ravalli
26	7	Missoula
27	2	Sanders and Mineral
28	2	Lake
29	2	Glacier
30	5	Flathead
31	2	Lincoln

History: En. Sec. 2, Ch. 194, L. 1967.

Repealing Clause

Section 13 of Ch. 194, Laws 1967 read
 "Sections 16-508, 16-518, 23-1108, 23-
 1809, 23-1810, 23-1811, 43-101, 43-102, 43-
 103, 43-104, 43-105, 43-106, 43-203, and
 43-204, R. C. M. 1947 are repealed."

43-107. (48) Congressional districts. The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Teton, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Treasure,

Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

History: Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917; re-en. Sec. 48, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. Sec. 1, Ch. 124, L. 1967.

Amendments

The 1967 amendment deleted preliminary and generalized descriptions of the districts; and transferred Glacier, Toole, Liberty, Pondera, Teton, Meagher and Park counties from the second congressional district to the first congressional district.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Section 43-107, prior to the 1967 amendment, was unconstitutional in that it violated the Equal Protection Clause

of the Fourteenth Amendment of the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

- Section 43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.
43-216. Alternate method of selection—failure of one candidate to receive majority vote.
43-217. "Vacancy" defined.

43-203, 43-204. (53, 54) Repealed.

Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators,

were repealed by Sec. 13, Ch. 194, Laws 1967.

43-211 to 43-214. (61 to 64) Repealed.

Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting. When a vacancy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the board of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

History: En. Sec. 1, Ch. 179, L. 1967.

Preamble

Title of Act

An act to provide that vacancies in either house of the legislative assembly shall be filled by the board or boards of county commissioners of the county or counties concerned.

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

43-216. Alternate method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967.

43-217. "Vacancy" defined. For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

History: En. Sec. 3, Ch. 179, L. 1967.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Per diem, mileage and expenses of members. (1) Members of the legislative assembly hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and eight cents (8¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

(2) Members shall also receive fifteen dollars (\$15.00) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 80, L. 1965. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

3-312 to 43-317. (76 to 78.3) Repealed.

Repeal

These sections (Secs. 222, 223, Pol. C. 895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 7, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 12, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement. (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

Amendment

The 1965 amendment deleted "in a special fund to be known as the 'Lobby Li-

cence Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

Section 43-902. Schedule of fees.

43-902. Schedule of fees. (a). * * * [Same as parent volume.]

(b) In addition to the fee for each complete set of the proceeding specified by subsection (a) of this section, any person who request that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of fifty dollar (\$50) if a person requests that the proceedings be mailed first class mail and eighty dollars (\$80) if a person requests that the proceedings be mailed airmail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, mimeographed memorials, printed bills, printed resolutions, printed memorials or amendments thereto shall pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents (25¢) per single copy.

(d) Any person desiring to receive single copies of status sheet or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy.

(e) The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day.

(f) The secretary of state shall account for all funds collected under this act and transmit such funds to the treasurer of the state of Montana who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967.

Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

Effective Date

Section 2 of Ch. 14, Laws 1967 provides the act should be in effect from and after its passage and approval. Approved February 2, 1967.

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
- 43-1002. Budget director to prepare note.
- 43-1003. Note referred to committee—distribution to legislators on report of bill.
- 43-1004. Contents of fiscal notes.
- 43-1005. Note requested by committee or house.
- 43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965.

note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

Title of Act

An act requiring the inclusion of a fiscal

43-1002. Budget director to prepare note. The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days.

History: En. Sec. 2, Ch. 53, L. 1965.

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965.

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill by:

(1) A committee considering the bill, or

(2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; providing, however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day.

History: En. Sec. 5, Ch. 53, L. 1965.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965.



TITLE 44—LIBRARIES

- Chapter 1. The state library of Montana, 44-127, 44-131 to 44-139.
 2. County and regional free libraries, 44-213, 44-214, 44-218 to 44-228.
 3. City free public libraries, Repealed—Section 12, Chapter 260, Laws of 1967.
 4. State law library, 44-404, 44-410, 44-412.
 5. Historical society—library and museum, 44-516 to 44-529.
 6. Interstate library compact, 44-601, 44-602.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section 44-127. State library commission created.
 44-131. Powers of state library commission.
 44-132. Definitions.
 44-133. Creation of distribution center—state library commission to make regulations.
 44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.
 44-135. Depository contracts—eligibility requirements—standards.
 44-136. List of available publications.
 44-137. State agency lists of current publications.
 44-138. Restriction on general public distribution.
 44-139. Exempt state agencies and officers.

44-127. (1575.1) State library commission created. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

Amendment

The 1965 amendment deleted "as chairman" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

44-129, 44-130. (1575.3, 1575.4) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians.

History: En. Sec. 2, Ch. 215, L. 1965.

Repealing Clause

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

History: En. Sec. 1, Ch. 261, L. 1967.

Title of Act

An act to create a state publications library distribution center as a division

of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

44-133. Creation of distribution center—state library commission to make regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment

of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 261, L. 1967.

44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications. Every state agency shall upon release deposit at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967.

Cross-Reference

Printing and publications of state agencies and offices, sec. 82-1916.

44-135. Depository contracts — eligibility requirements — standards. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967.

44-136. List of available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967.

44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. Exempt state agencies and officers. This act shall not apply to nor affect the duties concerning publications distributed by, or officers of:

- (1) The state law library;
- (2) The secretary of state in connection with his duties under sections 317, 82-2202 (17) and 82-2203, R.C.M. 1947.

History: En. Sec. 8, Ch. 261, L. 1967.

CHAPTER 2—COUNTY, CITY AND REGIONAL FREE LIBRARIES

- Section 44-213. Participation of other governmental units.
 44-214. Board of trustees—appointment and term.
 44-218. Purpose of act in regard to free public libraries.
 44-219. Establishing public library—resolution—petition.
 44-220. Levying of tax—special library fund—payments upon order or warrant.
 44-221. Board of trustees—appointment—composition of board—tenure.
 44-222. Board of trustees—powers and duties.
 44-223. Board of trustees—chief librarian—personnel—compensation.
 44-224. Free use of library—exclusions—extending privileges.
 44-225. Providing library services—co-operation and merging of boards, institutions and agencies.
 44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.
 44-227. "City" defined.
 44-228. Continued existence of all public libraries.

44-201 to 44-210. (4563 to 4572) Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202,

L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and op-

eration of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

Effective Date

Section 2 of Ch. 249, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

44-214. Board of trustees—appointment and term. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession.

History: En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967.

Amendments

The 1967 amendment added the last sentence.

44-216, 44-217. Repealed.

Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians

for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-218. Purpose of act in regard to free public libraries. It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967.

Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and re-

pealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

44-219. Establishing public library—resolution—petition. A public library may be established in any county or city in either of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

History: En. Sec. 2, Ch. 260, L. 1967.

44-220. **Levying of tax—special library fund—payments upon order or warrant.** The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed $4\frac{1}{2}$ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967.

44-221. **Board of trustees — appointment — composition of board — tenure.** Upon the establishment of a public library under the provisions of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board

of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city or county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: En. Sec. 5, Ch. 260, L. 1967.

44-223. Board of trustees—chief librarian—personnel—compensation. The board of trustees of each library shall appoint and set the com-

pensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967.

44-224. Free use of library—exclusions—extending privileges. Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes. After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967.

44-227. "City" defined. Wherever the word "city" is used in this act it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967.

44-228. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967.

CHAPTER 3—CITY FREE PUBLIC LIBRARIES

(Repealed—Section 12, Chapter 260, Laws of 1967)

44-301 to 44-303. (5049 to 5051) Repealed.

Repeal

These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931;

Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

CHAPTER 4—STATE LAW LIBRARY

- Section 44-404. Librarian—term of office.
 44-410. Accounts—approval.
 44-412. Assistance in preparing index.

44-404. Librarian—term of office. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 4, Ch. 153, L. 1949;
 amd. Sec. 21, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second

sentence reading, "The librarian must execute an official bond, in the sum of one thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

44-407. Repealed.**Repeal**

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949;
 amd. Sec. 13, Ch. 97, L. 1961; amd. Sec.
 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes.

History: En. Sec. 12, Ch. 153, L. 1949;
 amd. Sec. 86, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and said assistant shall be paid out of the library fund" at the end of the section.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.
 44-517. Definition of terms.
 44-518. Library and museum independent of other state institutions.
 44-519. Board of trustees—appointment and terms of members.
 44-520. Qualifications of trustees.
 44-521. Executive committee of trustees.
 44-522. Reimbursement of trustees.
 44-523. Powers and duties of trustees.
 44-524. Director's responsibility—assistants and employees.
 44-525. Official seal of society.
 44-526. Furnishings and fittings in veterans' and pioneers' building.
 44-527. Fund raising drives—revenues and receipts.
 44-528. Fine arts' commission abolished.
 44-529. Admission fees for antique automobile collection—disposition of proceeds.

44-501 to 44-515. Repealed.**Repeal**

These sections (Secs. 1 to 15, Ch. 134,
 L. 1949; Secs. 14, 19, Ch. 97, L. 1961),

relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

44-517. Definition of terms. As used in this act, (1) “Society” means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;

(d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and

(e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) “Trustees” means the board of trustees of the Montana historical society.

(3) “Committee” means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other

library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

Removal of Director of State Historical Society

Under this section and sections 44-523 and 59-405 the power to remove the director of the state historical society lies

in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilyra v. District Court of the First Judicial District, — M —, 418 P 2d 874, 876.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies

in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, — M —, 418 P 2d 874, 876.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and

control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

References

State ex rel. MacGivra v. District Court of the First Judicial District, — M —, 418 P 2d 874, 875.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

Sale of Ancient Warrants

Chapter 134, Laws 1963, effective until June 30, 1965, provides for sale of certain old territorial and state warrants by the territorial centennial commission. The act reads: "An act to authorize and direct the state auditor to deliver certain warrants to the Montana territorial centennial commission.

"Section 1. The state auditor is hereby authorized and directed to deliver to the Montana territorial centennial commission all remaining territorial warrants and all state warrants dated prior to 1899 in

his possession. The commission shall sell these warrants in any manner they see fit, upon authorization by the state controller.

"Section 2. All money realized from the sale of these warrants shall be deposited with the state treasurer to the credit of the Montana territorial centennial commission and warrants issued upon authority of officers of the commission.

"Section 3. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund."

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963. 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed.”

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read “Sections 44-501, 44-502, 44-503, 44-504,

44-529. Admission fees for antique automobile collection—disposition of proceeds. An admission fee shall be set by the board of trustees of the Montana historical society and paid by patrons of the antique Ford automobile collection. Admission fee proceeds up to the amount of twelve thousand five hundred dollars (\$12,500) per fiscal year shall be deposited in the general fund. Proceeds over such amount each fiscal year shall be deposited in the Montana historical society account in the earmarked revenue fund.

History: En. Sec. 2, Ch. 324, L. 1967. mobile collection for the biennium ending June 30, 1969.

Title of Act

An act to appropriate money from the general fund to the Montana historical society to lease, operate and maintain a building to house the antique Ford auto-

Appropriation

Section 1 of Chapter 324, Laws 1967, appropriated funds for housing the antique automobile collection during the biennium ending June 30, 1969.

CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.

44-602. Executive officer of state library commission as administrator.

44-601. Text of library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.
5. Sue and be sued in any court of competent jurisdiction.
6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.
7. Construct, maintain and operate a library, including any appropriate branches thereof.
8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library programs, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on

any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this com-

pact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967. law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

Title of Act

An act approving and enacting into

44-602. Executive officer of state library commission as administrator.
The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967.

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
4. Loggers' liens, 45-401.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.
15. Federal tax lien, 45-1501 to 45-1507.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was

repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds

property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.
45-308. When restoration extinguishes lien.

45-301. (8238) Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

Section 45-401. Who entitled to lien.

45-401. Who entitled to lien. Every person, general partnership, limited partnership, corporation or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or

lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

History: En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

Amendments

The 1967 amendment inserted "general partnership, limited partnership, corporation or association" after "Every person" at the beginning of the section.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387, P 2d 712.

CHAPTER 5—MECHANICS' LIENS

45-501. (8339) Who entitled to lien.

Compiler's Note

The decision in *CaIRD Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Abandoned Improvements — Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure

of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) How lien perfected.

Compiler's Note

The decision in *CaIRD Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Effect of Failure to File Lien within Ninety Days after Material Is Furnished — Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

45-504. (8342) What property affected.**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-505. (8343) Leasehold interest—how affected.**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-506. (8344) Priority of lien over mortgage or other liens.**Lien Preferred to Subsequent Mortgage**

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the suc-

cessor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. *Hammer v. Chapin*, 256 F Supp 818, 820.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE**Section 45-704. Acknowledgment of satisfaction of lien.****45-707. Satisfaction of lien.**

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-809. Acknowledgment of satisfaction of lien—penalty.

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowl-

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1003. (8377) Manner of enforcing liens—duty of county clerks. The liens herein created shall arise, be perfected, have the same priority and be enforced in the same manner and the duty of county clerks with

respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, with the following exceptions:

- (1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.
- (2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963.

Amendment
The 1963 amendment inserted the words "arise, be perfected, have the same priority and" near the beginning of the section;

and added, at the end of the section, the words "with the following exceptions" and the numbered paragraphs.

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004 to 45-1006. Repealed.

Repeal
These sections (Secs. 4 to 6, Ch. 143, L. 1957), relating to the perfection and pri-

ority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963.

CHAPTER 11—MISCELLANEOUS LIENS

- Section 45-1106. Agisters' liens and liens for service—priority.
- 45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal
This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating

the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted

45-1107. (8384) Secured party may take possession of property. Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

Amendment

The 1963 amendment substituted "se-

"perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record;

and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

CHAPTER 15—FEDERAL TAX LIEN

- Section 45-1501. Federal tax lien—place of filing.
 45-1502. Execution of notices and certificates.
 45-1503. Duties of filing officer.
 45-1504. Fees.
 45-1505. Uniformity of interpretation.
 45-1506. Short title.
 45-1507. Tax liens and notices filed before effective date of this act.

45-1501. Federal tax lien—place of filing. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967.

Title of Act

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes

payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

45-1502. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967.

45-1503. Duties of filing officer. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars (\$2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar (\$1) per page.

History: En. Sec. 3, Ch. 228, L. 1967.

45-1504. Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a tax lien on real estate, two dollars (\$2).

(2) for a tax lien on tangible and intangible personal property, two dollars (\$2).

(3) for a certificate of discharge or subordination, one dollar (\$1).

(4) for all other notices, including a certificate of release or nonattachment, two dollars (\$2). The officer shall bill the district directors

of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967.

45-1505. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967.

45-1506. Short title. This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

History: En. Sec. 6, Ch. 228, L. 1967.

45-1507. Tax liens and notices filed before effective date of this act. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967.

Separability Clause

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision

or application and to this end the provisions of the act are severable."

Repealing Clause

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
6. Brands—recording—venting—livestock mortgages, 46-609.
 7. Inspectors and detectives, 46-704, 46-707.
 8. Inspection of livestock before removal from county, 46-803, 46-804, 46-806, 46-809 to 46-813.
 9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911.
 10. Estrays—disposal of, 46-1005, 46-1006.
 11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1107.
 14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
 19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
 21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
 23. Grass conservation—grazing districts, 46-2305, 46-2306, 46-2331.
 27. County livestock protective committees, 46-2706.
 28. Cattle protective districts, 46-2801 to 46-2810.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience

and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties en-

titled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTERHOUSES

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 6—BRANDS—RECORDING—VENTING—
LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-606. (3304) Right of owner of recorded brand.

Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under section 93-301-11. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving part-

ners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 491.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-704. Compensation.
46-707. Compensation for animals killed.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock in-

spectors and detectives, was repealed by Sec. 51, Ch. 177, Laws 1965.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-707. (3315) Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested par-

ties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

- Section** 46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.
 46-804. Fees for inspection and livestock transportation permit.
 46-806. Penalties for violations of act.
 46-809. Order requiring sheep removal permits—petition by sheep raisers.
 46-810. Permit required for removal of sheep after order—violation as misdemeanor.
 46-811. Form and issuance of permits—fee.
 46-812. Publication of notice of sheep removal permit order.
 46-813. Removal of permit requirement.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History. En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "agency fund" for "stock stray fund" in

the last sentence of the second paragraph; the sale of stray stock" for "against said and substituted "for moneys arising from fund" at the end of the section.

46-804. Fees for inspection and livestock transportation permit. (a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the

livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subds. (a), (b) and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.]

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to re-

quire a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the

permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-904. State treasurer to hold proceeds of sales of stray stock.

46-911. License fee.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
140 M 1, 367 P 2d 775, 778.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock. When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 105, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-908. Certificate to operate livestock market required, etc.**Governmental Licensing**

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of

Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.**Discretionary Power of Commission**

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets

outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars (\$100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

46-917. Appeal by licensee or applicant for certificate, etc.**Review by District Court**

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capri-

ciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or

through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such stray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

**CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION—
HIDE DEALERS' LICENSES**

Section 46-1107. Hide dealer or buyers license fee—disposition of proceeds.

46-1107. (3350.8) Hide dealer or buyers license fee—disposition of proceeds. Every hide dealer or buyer shall pay to the livestock commission a license fee of five dollars (\$5.00) for each established place of business at which such hide dealer or buyer purchases or deals in hides, before engaging in, or conducting any business as such in the state of Montana, which license shall continue in force and effect for that calendar year. The moneys collected from such licenses shall be placed in the earmarked revenue fund, livestock commission account. The license must be renewed January 1 of each year commencing January 1, 1961.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

46-1411. (3380) Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys. (a) and (b). * * * [Same as parent volume.]

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963.

Amendment

The 1963 amendment in the first sentence of subsection (c) deleted "shall have, and it is hereby invested with control and supervision of the state bounty fund,

and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose

salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of

Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission,

and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as

the 'bounty fund'; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

road construction areas, secs. 32-319 to 32-321.

Livestock running at large in emergency

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners

or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1955.

Amendment

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied.

If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2305. Secretary—compensation.

46-2306. Compensation of members—auditing and payment of claims.

46-2331. Fees may be imposed by commission against districts.

46-2305. Secretary—compensation. The commission shall select and appoint a secretary at a salary in such amount as may be specified by the legislative assembly in the appropriation to the grass conservation commission. If the legislative assembly does not specify the maximum salary of the secretary, it shall be fixed by the commission after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955; amd. Sec. 1, Ch. 24, L. 1967; amd. Sec. 3, Ch. 237, L. 1967.

Amendments

Chapter 24, Laws of 1967, increased the maximum salary of the secretary of the grass conservation commission from \$500 per month to \$10,000 per year.

Chapter 237, Laws of 1967, substituted the latter part of the first sentence, beginning with "in such amount," for a clause fixing the secretary's maximum salary at \$500 per month; inserted the second and third sentences; and deleted a final sentence providing for the commission to fix the secretary's salary.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 24 and once by Ch. 237. Chapter 24 was approved February 10, 1967, and Ch. 237 was approved March 1, 1967. Since the amendments are irreconcilable, the text of Ch. 237 is used above.

46-2306. Compensation of members—auditing and payment of claims. The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The

per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963.

"moneys of the Montana grass conservation commission in the earmarked revenue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

Amendment

The 1963 amendment substituted

46-2330. Repealed.

Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections pay one per cent (1%) of said fees and collections to the state treasurer to be placed in the general fund, and shall repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such funds shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939;
amd. Sec. 1, Ch. 241, L. 1961; amd. Sec.
156, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2706. Discontinuing county livestock protective committee.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953;
amd. Sec. 2, Ch. 204, L. 1957.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added "and further providing * * * indebtedness against it" at the end of this section.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
46-2802. Selection of cattle protective committee members.
46-2803. Powers and duties of protective committees.
46-2804. Tax levy—deposit of proceeds.
46-2805. Removal of area from protective district—discontinuance of district—levy saved.
46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
46-2807. Selection of cattle protective committee members.
46-2808. Powers and duties of protective committees.
46-2809. Tax levy—deposit of proceeds.
46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall"

for "may" before "remove the area"; added "and further providing * * * indebtedness against it" at the end of the section; and made a minor style change.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective dis-

trict embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

Title of Act

An act relating to the formation of a cattle protective district within any

county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against t.

History: En. Sec. 5, Ch. 91, L. 1965;
md. Sec. 3, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

TITLE 47—LOANS

- Chapter 1. Loans for use or exchange—loan of money, 47-124.
2. Consumer Loan Act, 47-210, 47-214.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-124. (7725) Legal interest. Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year. [Effective January 1, 1965.]

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1917.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further

action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. Wynacht*, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.

References

Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT

- Section 47-210. Rates and charges—refunds—past due amounts—excess charges, effect.
47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.

47-210. Rates and charges—refunds—past due amounts—excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of sub-

section (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to

obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance. Subject to the laws of this state, credit life insurance may be provided at the expense of the borrower and may be written by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed one thousand dollars (\$1,000).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted sub-

section (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-142 to 48-151.
2. Annulling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

- Section 48-118.1. Application for license.
48-142. Legislative intent—public policy.
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.
48-144. Application for marriage license—form.
48-145. Advice to license applicants of legislative intent.
48-146. License required for marriage—place of ceremony—county where license issued.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.
48-150. Validity of foreign marriages.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term con-

sortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-111. (5705) Subsequent marriage—when illegal and void.

Voidness of Former Marriage

Under section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be

made under this section by the person involved to avoid being charged with the crime of bigamy under sections 94-701 and 94-702. *State v. Crosby*, — M —, 420 P 2d 431, 433.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.

Repeal

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Application for license. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed

marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period.

History: En. Sec. 1, Ch. 71, L. 1961;
amd. Sec. 10, Ch. 232, L. 1963.

Amendment

The 1963 amendment added the second proviso to the first sentence.

48-118.2. Repealed.

Repeal

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-121. (5715) Repealed.

Repeal

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every

male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of sixteen (16) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is between the ages of eighteen (18) and twenty-one (21) if a male, or between the ages of sixteen (16) and eighteen (18) if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana

County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant

Full name _____

Race or Color _____

Usual Residence _____

Street address or R. F. D. No. _____

City or town, county, state, country _____

When did your residence in this county begin? _____

Have there been any interruptions in your residence in this county since that date? _____

Date of birth _____ Age _____

month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____

(not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Male applicant affirms this _____

is his _____ marriage.

number

Previous marriages were ended _____

by: _____

manner date place

Children by prior marriages _____

Are you presently in default of a legal obligation to support lawful dependent(s)? _____

From the Female Applicant

Full name _____

Race or Color _____

Usual Residence _____

Street address or R. F. D. No. _____

City or town, county, state, country _____

When did your residence in this county begin? _____

Have there been any interruptions in your residence in this county since that date? _____

Date of birth _____ Age _____

month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____

(not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Female applicant affirms this _____

is her _____ marriage.

number

Previous marriages were ended _____

by: _____

manner date place

Children by prior marriages _____

Are you presently in default of a legal obligation to support lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? -----
Your blood relationship to
other applicant, if any? -----
If prior application rejected
in another county, state
place, reasons and date: -----

Are you under the influence
of intoxicating liquor or
narcotic drug? -----
Your blood relationship to
other applicant, if any? -----
If prior application rejected
in another county, state
place, reasons and date: -----

Sworn and subscribed to before
me this ----- day of -----
----- A.D., 19-----

Signature

Title

Marriage to take place -----
date -----

place (city and county)

Application filed -----
date -----

License issued -----
date -----

Future Address

Enter here exact future address
after marriage, if known -----

street address

city or town

state

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impair-

ment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the

grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. Validity of foreign marriages. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

Repealing Clause

Section 12 of Ch. 232, Laws 1963 read "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed."

48-151. Repealed.**Repeal**

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after di-

vorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-202. (5729) Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) Actions therefor—when and by whom commenced. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) Repealed.**Repeal**

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. Legitimacy of children unaffected by annulment—custody and support orders. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter

make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963.

"Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

References

Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

49-105. (8743) One must so use his own rights as not to infringe upon the rights of another.

References

State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274;

Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re Cox' Estate, 141 M 583, 380 P 2d 584.

References

Cited in Doull v. Wohlschlager, 141 M 354, 377 P 2d 758, 765; Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706; Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.

References

Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

References

Brannon v. Lewis and Clark County,
143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

References

Thisted v. Country Club Tower Corp.,
146 M 87, 405 P 2d 432; Thisted v.

Tower Management Corp., — M —, 409
P 2d 813.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making

no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after the payments became due. Lakes v. Orley, — M —, 420 P 2d 151, 153.

TITLE 50—MINES AND MINING

Chapter 10. Strip coal mining—reclamation of lands, 50-1001 to 50-1004.

CHAPTER 10—STRIP COAL MINING—RECLAMATION OF LANDS

- Section 50-1001. Public policy stated.
50-1002. Contracts for reclamation purposes—bureau of mines to sue and be sued.
50-1003. Conservation agencies to co-operate with bureau of mines.
50-1004. Credit on taxes—inspection of mines—reports to state board of equalization.

50-1001. Public policy stated. It is hereby declared to be the public policy of the state of Montana:

The vast deposits of bituminous, subbituminous and lignite coal underlying the state of Montana are one of its most valuable natural resources and greatest assets. The development of these coal deposits will contribute greatly to the economic welfare and prosperity of the people of this state, in that such development will attract new industry to this state and assist in the expansion of existing industry. It is the policy of this state that the development of these coal deposits be encouraged, and that such development be brought about at the earliest possible date and in a manner most beneficial to the people of this state.

Many of these coal deposits are susceptible to development by strip-mining methods, and, in fact, due to other factors certain of these deposits can be developed economically only by strip-mining methods. Any undesirable results from strip mining can be to a great extent prevented or avoided by a proper program of reclamation in those areas where strip mining has been conducted. In order to reduce any undesirable effects of the strip mining of coal and in order to minimize any pollution of the soil and streams of this state by strip mining of coal, and to return to useful production lands which have to be strip mined, and to preserve and enhance the natural beauty of this state, it is the policy of this state to provide for and encourage the reclamation of lands on which the strip mining of coal has been conducted.

History: En. Sec. 1, Ch. 245, L. 1967.

Title of Act

An act to provide for the reclamation of lands on which strip mining of coal has been conducted; to authorize the Montana bureau of mines and geology to

enter into contracts for the reclamation of lands on which strip coal mining has been conducted: authorizing a credit on coal mines license tax for one-half ($\frac{1}{2}$) of the amounts spent on land reclamation, and amending section 84-1303 R. C. M. 1947.

50-1002. Contracts for reclamation purposes—bureau of mines to sue and be sued. The Montana bureau of mines and geology is hereby authorized and directed to enter into contracts in the name of the state of Montana with strip coal mine operators which will provide for the reclamation of lands on which the strip mining of coal has been conducted by such operators. The Montana bureau of mines and geology is authorized to sue and be sued in the name of the state of Montana to

enforce the provisions of any strip-mined land reclamation contract, and the bureau of mines and geology shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 2, Ch. 245, L. 1967.

50-1003. Conservation agencies to co-operate with bureau of mines. All agencies of the state of Montana concerned with reclamation, soil or water conservation, recreation, fish, game, and wildlife, state parks, state forests, and state lands, shall co-operate with and assist the Montana bureau of mines and geology in carrying out and enforcing contracts for the reclamation of lands on which the strip mining of coal has been conducted.

History: En. Sec. 3, Ch. 245, L. 1967.

50-1004. Credit on taxes—inspection of mines—reports to state board of equalization. Any strip coal mine operator who shall enter into a contract with the Montana bureau of mines and geology providing for the reclamation of lands on which the strip mining of coal has been conducted, shall annually receive credit toward the payment of the coal mines license tax provided for in chapter 13 of Title 84, R.C.M. 1947, in an amount equal to one-half ($\frac{1}{2}$) of the reasonable value of the reclamation work performed on such lands under such contracts during the preceding year.

The Montana bureau of mines and geology shall annually inspect each strip-mining operation for coal in this state, and shall, if the operator of such mine has entered into a contract for the reclamation of strip-mined lands, determine the reasonable value of all reclamation work performed by such mine operator during the preceding year. The bureau of mines and geology shall promptly after each annual inspection, report to the state board of equalization, the state treasurer, and the operator the reasonable value of reclamation work performed on strip-mined lands during the immediately preceding year by each strip-mine operator, and one-half ($\frac{1}{2}$) of the amount so reported shall be deducted from coal mines license tax due from such strip coal mine operator pursuant to the provisions of chapter 13 of Title 84, R.C.M. 1947.

History: En. Sec. 4, Ch. 245, L. 1967.

TITLE 51—MONOPOLIES

- Chapter 1. Unfair Practices Act, 51-113.
3. Montana Cigarette Sales Act, 51-301 to 51-314.

CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order.

51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order. (1) The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law. The commission shall meet not less than six (6) times a year on or about the fifteenth (15th) day of the month, and as often and wherever it may decide other meetings are necessary. Suitable notice of all meetings shall be given as the commission may determine.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice from any person that any person, firm or corporation is violating or has violated any of the provisions of this chapter, the commission shall immediately notify the person giving such notice either to appear at its next regular or special meeting or to make a written reply to show probable cause of such violation. If probable cause is shown, the commission must thereafter make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

If, after such investigation the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five (5) days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said pro-

ceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(3) to (10). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967.

Amendments

The 1967 amendment inserted the second sentence in the first paragraph of sub-

section (1); inserted the first paragraph in subsection (2); substituted "If, after such investigation" for "Whenever" at the beginning of the second paragraph in subsection (2); and inserted arabic numbers after the written numbers in subsections (2), (4), (7) and (8).

CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.
 51-302. Short title.
 51-303. Definitions.
 51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
 51-305. Sales from wholesaler to wholesaler.
 51-306. Combination sales.
 51-307. Exceptions.
 51-308. Sales to meet competition.
 51-309. Contracts in violation void.
 51-310. Evidence to be considered as bearing on bona fides of cost.
 51-311. Cigarettes purchased outside ordinary trade channels.
 51-312. Cost survey.
 51-313. Civil suits for violation of act.
 51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes

and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "board" shall mean the state board of equalization of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the board of proof which the board declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the board of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ($\frac{3}{4}$ of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all type of licenses, business taxes, insurance, and advertising, including any rebates or concession no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business by the retailer making the

sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10 %) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10 %) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965;
amd. Sec. 1, Ch. 130, L. 1967.

Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods * * * shall include within said costs" for "accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11) (a) substituted "the said retailer * * * shall include within said costs" for "him in his allocation of overhead costs and

expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates * * * the 'basic costs of cigarettes'" after "advertising," inserted "however" after "provided," substituted "purchases from the manufacturer * * * wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10) (b)," and added "(b)" after "subparagraph (10)."

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. Contracts in violation void. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. Evidence to be considered as bearing on bona fides of cost. (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal,

customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. Cigarettes purchased outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. Cost survey. Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. Civil suits for violation of act. (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act,

the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the re-

mainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Cigarette tax, secs. 84-5601 to 84-5623.

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212.

52-314. (8288) Report of sales, and filing thereof. Within ten days after the sale of any property subject to a security interest, as herein pro-

vided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) Contents of notices. Such notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; am. Sec. 11-139, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text see parent volume.

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. It shall be the duty of the secured parties, who file notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; am. Sec. 11-140, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

cured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

52-322. Fees—disposal of. The general recorder of marks and brand shall charge for filing and listing such notices of security agreements the sum of one dollar (\$1.00) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of one dollar (\$1.00) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; am. Sec. 1, Ch. 135, L. 1953; am. Sec. 96, Ch. 147, L. 1963; am. Sec. 11-141, Ch. 264, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147, and once by Ch. 264. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. The amendment by Ch. 264,

however, does not take effect until January 1, 1965.

Amendments

Chapter 147, Laws 1963, substitute "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substitute "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission nor any of its agents or employees shall be held responsible or liable t

either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or

mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401.** Short title.
52-402. Declaration of policy.
52-403. Definitions.
52-404. Authorization of trust indentures.
52-405. Qualifications of trustee.
52-406. Reconveyance upon performance—liability for failure to reconvey.
52-407. Time within which foreclosure must be commenced.
52-408. Foreclosure by advertisement and sale.
52-409. Notice of sale to be mailed, posted and published.
52-410. Trustee's deed.
52-411. Possession.
52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
52-413. Disposition of proceeds of sale.
52-414. Deficiency judgment not allowed.
52-415. Requests for copies of notice of sale.
52-416. Trustee's fees and attorney's fees.
52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it

is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last pub-

lication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale,

and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-106, 53-106.1, 53-106.7, 53-108 to 53-110, 53-112 to 53-115, 53-117 to 53-118.5, 53-119.1, 53-122, 53-129, 53-133, 53-139.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420, 53-422, 53-432, 53-438.
6. Additional fees or taxes on motor vehicles, 53-626, 53-638.1, 53-642.
7. Reciprocity and proportional registration, 53-701 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-102. Penalty for violations—enforcement of provisions.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
- 53-106.7. Distinctive plates for national guardsmen.
- 53-108. Renewal of registration.
- 53-109. Transfer of title or interest.
- 53-110. Filing of liens, rights, procedure, fees.
- 53-112. Fee for original certificate of ownership and transfer of title.
- 53-113. Lost certificates.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
- 53-115. Time for making application.
- 53-117. Disposition of taxes.
- 53-118. Application for dealer's license.
- 53-118.1. Demonstration of trucks and trailers authorized—dealer's plate to be used.
- 53-118.2. Application for truck demonstration permit—form and contents—number of permits authorized.
- 53-118.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited.
- 53-118.4. Violation of truck demonstration provisions.
- 53-118.5. Disposition of truck demonstration fees.
- 53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
- 53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
- 53-133. Definitions.
- 53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles,

trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

- (a) Under distinctive license number assigned to vehicle by the county treasurers.
- (b) Alphabetically under name of owners.
- (c) Numerically under make and identifying number of vehicle.
- (d) Such other index of registration as registrar shall deem expedient.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6 to 8. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailers"; inserted "and" before "of all dealers"; and deleted "and automobile accessories and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-102. (1755.1) Penalty for violations—enforcement of provisions. The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965.

Amendment

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-106. (1757) Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type, one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the (word) "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive regis-

tration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailer.

Number plates assigned to any motor vehicle shall be used only on the specific motor vehicle to which originally assigned.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46;

Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967.

Amendments

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent

year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after "marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2); substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailer" after "trailers" at the end of the first sentence of subsection (4).

Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the year 1963, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application

and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963.

Amendment

The 1963 amendment substituted "thirty

(30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

History: En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 1, Ch. 114, L. 1967.

Title of Act

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

Amendments

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

53-107. (1758) Certificates of registration and ownership, etc.

References

Safeco Ins. Co. of America v. North-

western Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-108. (1758.1) Renewal of registration. Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually. Upon annual renewal, whenever the

legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

Any purchaser of a motor vehicle from a duly licensed motor vehicle dealer which has not been registered or reregistered for the current year may during the time of (the) certificate of ownership thereto is in the process of being transferred in the office of the registrar of motor vehicles, upon making an affidavit to that effect upon a form prescribed by the registrar of motor vehicles and upon the payment of a fee of two dollars (\$2.00) to be collected by the county treasurer and remitted to the registrar of motor vehicles, obtain from the county treasurer of the county in which said vehicle is subject to tax a temporary windshield sticker of such size, color and design as the registrar of motor vehicles may prescribe, to be validated by the county treasurer for a period of thirty (30) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle and upon displaying the number plates or plate assigned thereto for the previous year (unless the seller has been unable to deliver such previous year's plate or plates) shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, or no person shall purchase more than one (1) thirty (30) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous thirty (30) day windshield sticker. Provided, further, however, that any purchaser of a new motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of three (3) days from the date of purchase to make such application for registration and obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such new motor vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the said three-day period; providing further that such purchaser must have in his possession a valid bill of sale or other satisfactory evidence of ownership.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence in the third

paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same sentence.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 241 M 155, 382 P 2d 174.

53-109. (1758.2) **Transfer of title or interest.** (a) to (d). * * *
[Same as parent volume.]

(e) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice, postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

In the event of the death of an owner of one or more motor vehicles and/or trailer, and/or semitrailer, and/or trailer-house registered hereunder and not exceeding the value of one thousand dollars (\$1,000.00), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necesasry to entitle the affiant to a

transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(f). * * * [Same as parent volume.]

History: En. Subd. 3, Sec. 2, Ch. 159, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967.

Amendments

The 1967 amendment, in subsection (e), deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph; and added the present second paragraph.

Incomplete Transfer

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to obtain certificates of registration and ownership from the registrar of motor vehicles which were necessary to pass title to the buyer. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 382 P 2d 174.

Where neither buyer nor auto dealer made any attempt to comply with this section, there was no transfer of ownership

of damaged auto even though it had been in the possession of buyer for several days after the agreement to buy, and dealer's insurer, not buyer's, was primarily liable for damages to the auto. *Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 227 F Supp 978, 981.

Where buyer paid entire purchase price of automobile to seller, he took possession thereof as a "nonowned automobile" under liability policies of buyer extending coverage to operation of nonowned automobiles by insured or any relative, the transfer not complying with this section because of failure of seller to sign transfer on certificate of title and because no new certificate of title had been issued to buyer. *Colbrese v. National Farmers Union Property & Casualty Co.*, 227 F Supp 978, 982.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.]

(b) Satisfaction or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mort-

gage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section

74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales con-

tract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of two dollars (\$2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar (\$1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence from \$1.00 to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sen-

tence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1). * * * [Same as parent volume.]

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M. 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county

assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M. 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R.C.M. 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M. 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M. 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M. 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 290 and once by Ch. 296. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

53-115. (1759.1) Time for making application. Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967.

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

Amendments

The 1967 amendment changed the late date for registration or reregistration from February 1 to February 15.

53-117. (1759.3) Disposition of taxes. The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of oper-

ating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, or semitrailers and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below. A fee of two dollars (\$2) shall be paid to the sheriff for such verification. Each application must be accompanied by the license fee hereinafter named. Dealers license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," or "DTR" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

- (a) The name under which the business is conducted;
- (b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;
- (c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;
- (d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;

(e) Whether or not used vehicles are handled exclusively;

(f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers or semitrailers; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.

(g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of one thousand dollars (\$1,000.00), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of the business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer or semitrailer, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the pro-

visions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semitrailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers and/or semitrailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling, or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used exclusively for hire or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section.

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than fifty (\$50.00) dollars and not more than three hundred (\$300.00) dollars. For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

53-118.1. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under the provisions of section 53-118 may demonstrate to a prospective purchaser any truck, truck tractor, trailer or semitrailer, owned by or consigned to said dealer, or otherwise controlled by said dealer, by payment of the fees required in this section; provided the vehicle displays the

dealer's registration plate or other current Montana registration and the demonstration permit provided in section 2 [53-118.2] of this act.

History: En. Sec. 1, Ch. 36, L. 1965.

Title of Act

An act to permit the movement of trucks and trailers for demonstration purposes; providing for a permit therefor;

providing for the fee for such permit; providing for the issuance, validation and duration of such permits; providing for a penalty and providing for the disposition of fees.

53-118.2. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the Montana highway commission and payment of eight (\$8) dollars for each permit and the payment of this fee shall be in lieu of fees required under section 53-615. The form of such permits and the application therefore [therefor] shall be provided by the state highway commission under such rules and regulations as they may prescribe and shall be designed so that the licensed dealer may fill in the necessary information thereon and such permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of said licensed dealer. The licensed dealer may obtain more than one (1) but not to exceed five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 36, L. 1965.

Compiler's Notes

Section 53-615, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-118.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited. Vehicles displaying said permit may be operated either laden or unladen. Each of the said permits shall expire seven (7) days from and after the date of validation by the licensed dealer.

A demonstration permit shall not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

The vehicle operating with the demonstration permit shall not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer whatsoever.

History: En. Sec. 3, Ch. 36, L. 1965.

53-118.4. Violation of truck demonstration provisions. Violation of any provision of this section shall be deemed a misdemeanor and subject to the provision of section 53-623. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 36, L. 1965.

Compiler's Notes

Section 53-623, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-118.5. Disposition of truck demonstration fees. Fees collected under this section shall be disposed of in the manner provided in section

53-621 R. C. M., 1947, originally enacted as section 7, chapter 219, Laws of 1951.

History: En. Sec. 5, Ch. 36, L. 1965.

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965.

Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendment

The 1965 amendment substituted the

first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house

trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment

or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965.

Compiler's Notes

This section was amended twice in 1965, once by Ch. 121 and once by Ch. 197. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b)

above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of

public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00; substituted "unless otherwise specifically provided" for "mentioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several paragraphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws 1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a

county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.

Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

53-133. (1763) Definitions. The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used

cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-138. (1763.6) Repealed.

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) **Penalty for sale of vehicle with engine number altered or changed—application for special number.** (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not

less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925;
amd. Sec. 31, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

**CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS—
ACCIDENTS—SERVICE OF PROCESS**

53-202. Secretary of state attorney for service of process.

References

Olsen v. Dairyland Mut. Ins. Co., 248
F Supp 639.

53-203. Operation of motor vehicle as appointment, etc.

References

Olsen v. Dairyland Mut. Ins. Co., 248
F Supp 639.

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937;
Sec. 10, Ch. 117, L. 1961), relating to

service of process on nonresident motor-
ist, was repealed by Sec. 2, Ch. 189, Laws
1963.

**CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPO-
NSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS**

Section 53-418. Definitions.

53-420. Supervisor to furnish operating record.

53-422. Determination of security required—suspension of license and reg-
istration—exceptions—liability insurance.

53-432. Satisfaction of judgments.

53-438. Motor vehicle liability policy defined.

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1 to 11. * * * [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from \$5,000 to \$10,000 for bodily injury to or death of one person in any one accident,

from \$10,000 to \$20,000 for bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 for injury to or destruction of property of others in any one accident.

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of one dollar (\$1.00) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the final sentence from 50¢ to \$1.00.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance. (a) and (b). * * * [Same as parent volume.]

(c) This section shall not apply under the conditions stated in section 53-423, nor;

1. to such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the supervisor, covered by any other form of liability insurance policy or bond; nor

4. to any person qualifying as a self-insurer under section 53-451, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not au-

thorized to do business in this state shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

History: En. Sec. 5, Ch. 204, L. 1951; amd. Sec. 1, Ch. 83, L. 1959; amd. Sec. 2, Ch. 30, L. 1967.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 because of bodily injury to or death of one person in any one accident

to \$10,000; increased from \$10,000 to \$20,000 the amount required for bodily injury to or death of two or more persons in any one accident; and increased from \$1,000 to \$5,000 the amount required for injury to or destruction of property of others in any one accident, all in the last paragraph.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
2. when, subject to such limit of ten thousand dollars (\$10,000) because of bodily injury to or death of one person, the sum of twenty thousand dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or
3. when five thousand dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967.

Amendments

The 1967 amendment doubled the amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from \$1,000 to \$5,000.

53-438. Motor vehicle liability policy defined. (a). * * * [Same as parent volume.]

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with

respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) to (k). * * * [Same as parent volume.]

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1957.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 to \$10,000 because of bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 be-

cause of bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 because of injury to or destruction of property of others in any accident, all in subsection (b).

References

Empire Fire & Marine Ins. Co. v. Goodman, — M —, 412 P 2d 569.

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

- Section 53-626. Exemptions from act.
53-638.1. Exemptions of vehicles not capable of operation on highways.
53-642. "Special mobile equipment" defined.

53-615 to 53-619. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150,

L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-626. Exemptions from act. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles

brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act; and further providing all vehicles lawfully displaying a licensed dealers plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealers place of business when unladen or laden with dealers property only.

History: En. Sec. 12, Ch. 219, L. 1951;
amd. Sec. 1, Ch. 262, L. 1967.

Amendments

The 1967 amendment added the second proviso at the end of this section.

53-628 to 53-631. Repealed.

Repeal

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-634 to 53-638. Repealed.

Repeal

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

53-639. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was

repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving

mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955; **Amendment**
amd. Sec. 2, Ch. 150, L. 1963.

The 1963 amendment substantially rewrote this section. For previous version, see parent volume.

53-643. Repealed.

Repeal

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special

mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

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| Section | 53-701. Declaration of policy. |
| | 53-702. Definitions. |
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| | 53-721. Suspension of reciprocity benefits. |
| | 53-722. Agreements to be written, filed and available for distribution. |
| | 53-723. Reciprocity agreements in effect at time of act. |
| | 53-724. Act part of and supplement to motor vehicle registration law. |

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in

this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more juris-

dictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registra-

tion fees, license fees, taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965.

Amendment

The 1965 amendment substituted "li-

cense fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the

authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R. C. M.,

1947, as amended, and section 53-615, R. C. M., 1947, as amended and such property taxes if any be due thereon.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963;
amd. Sec. 2, Ch. 88, L. 1965.

Amendment

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

Compiler's Notes

Section 53-615, referred to in subsection (2) (b) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for such application and for the stickers or devices issued. A fee of two dollars (\$2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963;
amd. Sec. 3, Ch. 88, L. 1965.

Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Amendment

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by $1/12$ of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars (\$5.00), no credit shall be made or entered. In no event shall such amount be charged against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. Fleet registration may be denied. The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically

amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be

affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963.

Title of Act

An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture,

or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963.

Effective Date

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

- Section 53-901. Prohibition against parking or leaving vehicles on public or private property.
- 53-902. Taking vehicle into custody.
- 53-903. Notice to owner.
- 53-904. Reclaiming vehicle.
- 53-905. Sale of vehicle if not reclaimed.
- 53-906. Certificate of sale.
- 53-907. Issuing certificate of ownership.
- 53-908. Transmitting return of sale and balance of proceeds.
- 53-909. Penalty for violation and enforcement of provisions.

53-901. Prohibition against parking or leaving vehicles on public or private property. No vehicle shall be parked or left standing upon the right of way of any public highway, or city street, or upon any state, county or city property for a period longer than five (5) days.

History: En. Sec. 1, Ch. 288, L. 1967.

Title of Act

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

53-902. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of five (5) days or more on any public highway, or city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

History: En. Sec. 2, Ch. 288, L. 1967.

53-903. Notice to owner. (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into

custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

History: En. Sec. 3, Ch. 288, L. 1967.

53-904. Reclaiming vehicle. The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

History: En. Sec. 4, Ch. 288, L. 1967.

53-905. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967.

53-906. Certificate of sale. (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967.

53-907. Issuing certificate of ownership. The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967.

53-908. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967.

53-909. Penalty for violation and enforcement of provisions. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967.

Separability Clause

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional

or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

TITLE 54—NARCOTIC DRUGS

CHAPTER 1—UNIFORM DRUG ACT—REGULATION, POSSESSION AND SALE OF NARCOTICS

54-101. Definitions, words and phrases.

NOTE.—Uniform State Law. Mississippi and New Hampshire have adopted the Uniform Narcotic Drug Act.

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) **Repealed.**

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

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